(16,859.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 286.

THE CITY OF NEW ORLEANS, THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, AND GEORGE B. PENROSE, TREASURER OF THE CITY OF NEW ORLEANS, APPELLANTS,

vs.

MARY G. T. STEMPEL (WIFE OF EDWARD STEMPEL), GUARDIAN OF THE INFANTS FANNIE TOBIN McCAN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

MRS. MARY G. T. STEMPEL, Guardian, etc., Appellee,
versus
THE CITY OF NEW ORLEANS, GEORGE B. PENROSE, City Treasurer, and The Board of Assessors for the Parish of Orleans, Appellants.
} No. 12598. In Equity.

E. Howard McCaleb, Esquire, for appellee.

Samuel L. Gilmore, Esquire, city attorney, and J. J. McLoughlin, Esq., assistant city attorney, for The City of New Orleans & Geo. B. Penrose, city treasurer, appellants.

F. C. Zacharie, Esquire, for The Board of Assessors for the Parish of Orleans, appellant.

Appeal from the United States circuit court, eastern district of Louisiana (New Orleans division), to the Supreme Court of the United States, returnable within thirty (30) days from the 28th day of March, A. D. 1898, at the city of Washington, D. C.

Transcript of Appeal.

1 U. S. Circuit Court, Eastern District of Louisiana.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS.
} No. 12598. In Equity.

Bill of Complaint.

Filed January 9, 1897.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in equity:

Mary G. T. Stempel, wife of Edward Stempel, and by her said husband herein joined, authorized, and assisted, guardian of the infants Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, all citizens of the State of New York, and residing in the city of New York, in said State, brings this her bill of complaint against The Board of Assessors of the Parish of Orleans, The City of New Orleans, a political corporation, duly created and organized under the laws of the State of Louisiana, and George B. Penrose, treasurer of said city of New Orleans, all citizens of the State of Louisiana, domiciliated and residing within the jurisdiction of this honorable court; and thereupon your oratrix complains and says:

1st. That on the 20th day of November, A. D. 1894, your oratrix was duly appointed guardian of her above-named minor children,

issue of her marriage with Charles P. McCan, deceased, by the honorable the supreme court of the county of Kings, State of New York, and she duly qualified as such by taking the oaths and
2 giving the bonds required by the laws of the said State of New York and the decree of the supreme court of the county of Kings, State of New York, aforesaid.

2nd. That subsequently your oratrix produced satisfactory evidence of her appointment as guardian aforesaid to the honorable the civil district court for the parish of Orleans, division "D," and was authorized by said court to sue for and recover the property, rights, and credits belonging to said infants in this State, and to take possession of and remove their property out of the State of Louisiana, after she had furnished satisfactory proof to the court that no debts existed in this State.

3rd. That your oratrix instituted suits in the matter of the successions of Hester C. McCan and David C. McCan, numbered respectively 43186 and 39737 of the docket of the civil district court for the parish of Orleans, and her wards and infants above named were by final judgments recognized as the sole legal heirs of said Hester C. McCan and David C. McCan, and as such, through your oratrix, as their guardian, put in possession of the property and estates of said deceased respectively; which said judgments were rendered and became final on the — day of ——, 1896, and your oratrix caused said judgment- to be duly recorded in the conveyance office of the parish of Orleans.

4th. That besides the real estate so inherited by the children and wards of your oratrix from their grandfather, David C. McCan, and their grandmother, Hester C. McCan, and of which they were sent into possession, there were premium bonds issued by the city of New Orleans of the value of $118,227.60, consolidated bonds of the city of New Orleans of the value of $22,000.00, and $88,040.00 of bonds of the State of Louisiana, known as Louisiana new consols and baby bonds, the whole exceeding in amount the sum of
3 two hundred and twenty-eight thousand two hundred and seventy-one $\frac{60}{100}$ dollars ($228,271.60), besides a number of notes, secured by mortgage, drawn by various parties residing in the State of Louisiana to their own order and by them endorsed, exceeding in amount the sum of six hundred thousand dollars ($600,000); that all and singular the foregoing facts will more fully and at large appear by reference to the records and proceedings in the several successions of Charles P. McCan, No. 18811, and David C. McCan, No. 39737, and of Hester C. McCan, No. 43186, of the docket of the civil district court for the parish of Orleans.

5th. That after the rendition of said judgments, and while the assessment-rolls of the city of New Orleans were being exposed, during the month of March, 1896, your oratrix caused the same to be examined, and on ascertaining that there appeared upon the assessment-rolls of the first municipal and 2nd representative district of the city of New Orleans an assessment in the name of the estate of D. C. McCan for money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000, your oratrix filed a written

application with said assessors, demanding that said assessment should be cancelled, annulled, and set aside for the reason that her infant wards aforesaid had been sent into possession of the property so inherited by them from the estate of D. C. McCan, and to whom the same then and now belongs and by which said estate was terminated and had ceased to exist; that she and her said wards were all residents and citizens of the State of New York; that under the Constitution, laws, and jurisprudence of the courts of the United States the power of taxation is limited to persons, property, and business within the jurisdiction of the State; that debts are not property, and that non-residents, in virtue of debts due them,
4 could not be considered holders of property within the limits of the State for the purpose of taxation; that debts have their situs at the residence of the creditors, and can only be taxed there and not elsewhere, and she prayed by written petition, addressed to the said board of assessors of the parish of Orleans, that the assessment in the name of the "estate of D. C. McCan, on money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000.00," be erased and cancelled and stricken from the rolls as illegal, erroneous, and void; but the said board of assessors refused to comply with this very reasonable, just, and legal demand of your oratrix.

6th. That subsequently, between the 20th day of March and the 10th day of April, 1896, in which said illegal assessment was made, your oratrix, by her attorney, addressed a written communication to the standing committee on assessments of the city council of the city of New Orleans, calling their attention to the petition previously filed with the said board of assessors, and renewed the request therein contained, and also asked to be heard concerning said assessment, but no heed whatever was paid to said communication. She was deprived of the hearing provided by law and demanded by her attorney, and said illegal assessment allowed to remain upon the assessment-rolls of said city.

7th. Now your oratrix complains and says that the treasurer of the city of New Orleans has persisted and insisted upon the enforcement and collection of taxes for the city of New Orleans levied upon said erroneous, illegal, and void assessment in the sums of "estate D. C. McCan, moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000," and has demanded of your oratrix payment of said city taxes for the year 1896 levied upon the assessment, to wit, the sum of sixteen thousand nine hun-
5 dred and forty eight $\frac{3}{100}$ dollars ($16,948.02), and has threatened the seizure and advertisement of the property of her wards to pay said illegal taxes, as will more fully appear by the annexed notices, dated May 21, 1896, June 23, 1896, December 2, 1896, and January 7th, 1897, herewith filed for greater certainty and made part hereof, and to which your oratrix at all times craves reference.

8th. Your oratrix avers and charges that at the time said illegal assessment was made by the board of assessors of the parish of Orleans, as aforesaid, the estate of D. C. McCan had ceased to exist,

the legal heirs, the infant wards of your oratrix above named, having been recognized and sent into possession thereof through your oratrix as their guardian, and she was authorized to remove their property from the State of Louisiana, as aforesaid, after due publication and proof showing that there were no debts due and owing by them in this State.

9th. That said illegal and void assessment so entered upon the rolls of the board of assessors of the parish of Orleans, as aforesaid, in the name of "estate D. C. McCan, on money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000," was and is wrongfully made and levied upon evidences of debts and other incorporeal rights, which, when treated as property for the purpose of taxation, can only be assessed at the domicil or place of residence of the creditors (*i. e.*, your oratrix's infant wards), without regard to the domicil of the debtors, and which credits are not within the jurisdiction of the State of Louisiana and are not property within this State, but property of her said wards, taxable only at the place of their residence and domicile in the State of New York.

10th. That the attempt of the city of New Orleans to collect the taxes upon bonds issued by her and upon the bonds issued by the State, which compose a part of the credits on which the as-
6 sessment made by said board of assessors were wrongfully levied under pretended authority conferred by the laws of Louisiana, impairs the obligation of the contract entered into by said city and the State of Louisiana with the holders of their obligation, and violates the Constitution of the United States.

11th. (*a*) That your oratrix has given large bonds in compliance with the orders of the supreme court of the county of Kings, State of New York, by which she was appointed guardian, as aforesaid, amounting to the sum of eight hundred thousand dollars ($800,000) or thereabouts for the faithful performance of her duties and for the preservation of the property belonging to her wards in her possession as trustee thereof, and to which tribunal she has to account for her administration and gestion.

(*b*) That your *orator* fears and believes that George B. Penrose, treasurer of the city of New Orleans, will execute the threats contained in said notices above mentioned, and will proceed to the illegal seizures and advertisements of the property belonging to your oratrix's infant wards above named, and that the injury arising therefrom and inflicted thereby on the property of her said wards in her care, custody, and control, as guardian and trustee for their benefit, will be irreparable and irremediable; that the seizures and sales of said property to pay and satisfy said illegal taxes would occasion and cause a breach of the trust imposed upon your oratrix.

That your oratrix is entitled to the protection of this honorable court to stay and prevent the spoliation of the trust property belonging to her above-named infant wards from the threatened seizures and sales thereof by the treasurer of the city of New Orleans aforesaid.

12th. Your oratrix alleges and avers that she has paid
7 unto the city of New Orleans and also to the State of Louisiana all the taxes assessed and due upon real estate belonging to her minor wards and situated in the city of New Orleans, appearing on the assessment-rolls for the year 1896, and that neither she nor her infant wards represented by her as their guardian are in any way, manner, or form indebted unto the city of New Orleans or to the State of Louisiana for taxes on real estate situated in the city of New Orleans, the same having been paid by her; and your oratrix has also paid to the said city of New Orleans the personal taxes due, assessed, and owing on furniture, statuary, and jewelry situated in the city of New Orleans, valued at $2,500, to the city of New Orleans for the year 1896.

13th. Now your oratrix avers and so charges that notwithstanding the said written applications to the board of assessors of the parish of Orleans and committee on assessment of the city council of New Orleans, and the demands made for the cancellation of said illegal assessment aforesaid, they combining, colluding, and confederating together with the fraudulent intent and design of harassing, injuring, and oppressing the infant wards of your oratrix, and despoiling them of their property in her possession and under her control as guardian and trustee aforesaid, persisted in said wrongful assessment, suffered the same to be and remain in the name of the estate of D. C. McCan, although they were advised that no such estate then existed, insisted upon the maintenance of said illegal and void assessment on property, a portion of which, to wit, the State and city bonds above stated, were specially exempted from taxation, and all of which intangible property and incorporeal rights so assessed were outside and beyond the jurisdiction of said board of assessors of the parish of Orleans, not located in the city of New
Orleans or in the State of Louisiana; that the acts and
8 doings of said assessors and committee on assessments in entering said assessment upon the rolls, and retaining it there after the written protests, remonstrance, and demand for its cancellation, are illegal, fraudulent, and contrary to equity and good conscience; that the threatened seizure and sale of the property belonging to the infant wards of your oratrix to pay and satisfy the illegal municipal taxes levied on said void assessment, amounting to the sum of sixteen thousand nine hundred and forty-eight $\frac{2}{100}$ dollars ($16,948.02), will occasion, as your oratrix believes and fears, a multplicity of suits which should be avoided and prevented.

14th. That your oratrix is without adequate remedy at law, and that in order to prevent a breach of trust and spoliation and waste of the trust property under the administration of your oratrix, wasteful and expensive litigation growing out of the threatened seizures and tax sales of the property of said infant wards, which will occasion and cause a multiplicity of suits, your oratrix is entitled to invoke the equitable writ of injunction, forbidding and prohibiting the City of New Orleans and George B. Penrose, treasurer of the said city of New Orleans, from seizing, advertising, selling, or attempting to sell any of the property, rights, or credits belonging to

said infant wards above named, and in her possession and under her control as guardian, to pay and satisfy any municipal taxes illegally levied in the name of the "estate D. C. McCan, on money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000," for the year 1896, under the false pretext and subterfuge that the same are liable for said taxes.

Wherefore your oratrix prays:

1st. That it may please your honors to grant unto your oratrix the most gracious writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said City of
9 New Orleans, its officers, agents, attorneys, and representatives; to George B. Penrose, treasurer of said city, enjoining, forbidding, and prohibiting them and each of them from in any way or by any proceeding whatever enforcing the collection of the said taxes resulting from the illegal assessment hereinabove complained of, and from seizing, advertising, selling, or attempting to sell all or any of the property whatever belonging to the infant wards, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, and in the possession and under the control of your oratrix, as guardian and trustee thereof, to pay and satisfy any claim or demand for said taxes assessed for the year 1896 in the name of estate of D. C. McCan.

2nd. That the board of assessors of the parish of Orleans be condemned and ordered to erase and cancel from the assessment-rolls of 1896 the assessment against the "estate of D. C. McCan," on the rolls of the "3rd assessment district, square 19, of moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000.00," and that said assessment be declared illegal, null, and void.

3rd. That the assessment and municipal tax levied thereon aforesaid be declared illegal and violative of the constitution and laws of the State of Louisiana and the Constitution of the United States.

4th. That complainant may have such other and further order, decree, and relief in the premises as may be equitable.

5th. That the preliminary writ of injunction herein to be issued be made peremptory and perpetual.

And may it please your honors to grant unto your oratrix the writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the City of New Orleans, through its
10 mayor, Hon. W. C. Flower; George B. Penrose, treasurer of the city of New Orleans, and to the Board of Assessors of the Parish of Orleans, commanding them and each of them, by a certain day and under a certain penalty to be inserted, to be and appear before this honorable court in equity, and then and there to answer the premises under oath, and, further, to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience.

6th. And your oratrix further prays for costs and for all general and equitable relief, and, as in duty bound, she will ever continue to pray.

(Signed) E. HOWARD McCALEB,
Solicitor for Complainant.

E. Howard McCaleb, being duly sworn, deposes and says that he is the attorney-at-law and solicitor of Mrs Mary G. T. Stempel, guardian of her minor infants, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, who reside in the State of New York and who are now absent from the State of Louisiana; that he has read the bill of complaint in this cause and knows the contents thereof; that all facts therein stated are true to the best of affiant's knowledge and belief.

(Signed) E. HOWARD M'CALEB.

Sworn to and subscribed before me this 9 day of January, A. D. 1897.

(Signed) H. J. CARTER,
U. S. Commissioner.

Order.

Let the defendants show cause on Saturday, January 16, 1897, at 11 o'clock a. m., before the circuit court, why an injunction
11 *pendente lite* should not issue as prayed for, and in the meantime and until the hearing and decision on the motion for an injunction let a restraining order issue, restraining said defendants as prayed for.

Jan'y 9th, 1897.

(Signed) DON A. PARDEE,
Circuit Judge.

Marshal's Return on Copy of Rule for Injunction.

Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., 2.45 p. m., January 9, '97, & on the 11th day of Jan'y, '97, I served a true copy of the within rule on the following-named persons, to wit:

On the City of New Orleans, personally on W. C. Flower, mayor thereof.

On Geo. B. Penrose " "

" Board of Assessors " " on W. K. Horn, secretary thereof.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Restraining Order Issued to the City of New Orleans, its Officers, &c., January 9, 1897.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS. } No. 12598.

12 The President of the United States to the City of New Orleans, its officers, agents, attorneys, and representatives, Greeting:

Whereas it has been represented unto us in our said circuit court, on the part of Mary G. T. Stempel, guardian, &c., in a bill in equity lately exhibited against you and each of you touching certain matters and things therein set forth, and whereas the Honorable Don A. Pardee, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause whereby you are required to show cause on the 16 day of January, 1897, at 11 a. m., why an injunction should not issue as prayed for in said bill of complaint, and whereas the said judge has granted and allowed an order restraining you immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said City of New Orleans, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined under the penalty of the law that you and each of you absolutely refrain and desist from in any way or by any proceeding whatever enforcing the collection of the said taxes resulting from the illegal assessment hereinabove complained of, and from seizing, advertising, selling, or attempting to sell all or any of the property whatever belonging to the infant wards Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, and in the possession and under the control of your oratrix as guardian and trustee thereof to pay and satisfy any claim or demand for said taxes assessed for the year 1896 in the name of estate of D. C. McCan.

And that you, the said City of New Orleans, your agents,
13 attorneys, and servants, and each of you, remain so inhibited and restrained until the further order of our said court in the premises.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 9 day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return on Restraining Order. Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., 2.45 p. m., January 9, '97, and on the 11th day of Jan'y, '97, I served a true copy of the within restraining order on the City of New Orleans, through Hon. Walter C. Flower, mayor thereof, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Marshal's Return on Restraining Order Issued to George B. Penrose, Treasurer of the City of New Orleans. Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., 2.45 p. m., January 9, '97, & on the 11th day of Jan'y, 97, I served a true copy of the within restraining order on Geo. B. Penrose, treasurer of the city of New Orleans, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

14 *Subpœna in Chancery. Issued to the City of New Orleans, through its Mayor, Hon. W. C. Flower, January 11th,* 1897.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

You are hereby commanded to summon the City of New Orleans, through its mayor, Hon. W. C. Flower, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of February, 1897, then and there to answer a bill in chancery filed against City of New Orleans *et als.*, wherein Mary G. T. Stempel, wife of Edward Stempel, guardian of Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, are complainants and said City of New Orleans *et als.* are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 11 [SEAL.] day of January, in the year of our Lord one thousand eight hundred and ninety-seven, and the 121 year of American Independence.

(Signed) E. R. HUNT, *Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States circuit court on or before the first Monday of February, 1897; otherwise the bill may be taken *pro confesso*.

(Signed) E. R. HUNT, *Clerk*.

15 *Marshal's Return on Subpœna. Filed Jan'y* 12, 1897.

Received by U. S. marshal, New Orleans, La., January 11, '97, & on the same day I served a true copy of the within subpœna in chancery on the — New Orleans, through Hon. Walter C. Flower, mayor thereof, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Marshal's Return on Subpœna in Chancery Issued to George B. Penrose, Treasurer of the City of New Orleans. Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., January 11, '97, & on the same day I served a true copy of the within subpœna in chancery on Geo. B. Penrose, treasurer of the city of New Orleans, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Marshal's Return on Subpœna in Chancery Issued to the Board of Assessors of the Parish of Orleans. Filed Jan'y 12, 1897.

Received by U. S. marshal, New Orleans, La., January 11, '97, & on the 12th day of Jan'y, '97, I served a true copy of the within subpœna in chancery on the Board of Assessors for the Parish of Orleans, through E. K. Skinner, president thereof, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

16 *Order: Continuance of Rule for Injunction.*

Extract from Minutes.

SATURDAY, *January 16th*, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS & ALS. } No. 12598.

This case not being reached this day, on motion of solicitor for complainant—

It is ordered that the rule for an injunction be continued to Saturday, January 23, 1897, at 11 a. m.

Order: Continuance of Rule.

Extract from the Minutes.

SATURDAY, *January* 23, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

Owing to the proceedings to be had this day in memory of the late Chief Justice Merrick and Hon. J. Ad. Rozier—

It is ordered that the rule for an injunction herein go over to Jan'y 30, 1897, for hearing.

Hearing and Submission.

Extract from the Minutes.

November Term, 1896.

NEW ORLEANS, SATURDAY, *January* 30, 1897.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS & ALS. } No. 12598.

This cause came on to heard upon the motion of complain-
17 ant for an injunction—E. Howard McCaleb appearing for complainants; J. J. McLoughlin, ass't city att'y, for G. B. Penrose, city treasurer, & City of New Orleans; F. Zacharie for Board of Assessors—and was argued and submitted, when the court took time to consider.

Appearance of Geo. B. Penrose, City Treasurer, and the City of New Orleans.

Extract from the Chancery Order Book.

MONDAY, *February* 1, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

Now come Geo. B. Penrose, treasurer of city of New Orleans, and the City of New Orleans, through J. J. McLoughlin, ass't city att'y, and enter their appearance to the bill of complaint.

Appearance of Board of Assessors and Tax Collectors.

Extract from the Chancery Order Book.

SATURDAY, *Feb'y* 6, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS ET ALS. } 12598.

Now comes F. C. Zacharie and enters his appearance as solicitor for Board of Assessors & Tax Collectors to the bill of complaint herein.

Order: Restraining Order to Remain in Force, etc.

Extract from the Minutes.

November Term, 1896.

18 NEW ORLEANS, MONDAY, *February 8th*, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

In this cause, heretofore submitted on an application for an injunction—

It is ordered that the restraining order issued herein remain in force until the further orders of this court.

Motion and Order Granting Extension of Time to City of New Orleans to Plead or Answer. Entered and Filed Feb'y 27, 1897.

United States Circuit Court, Eastern District of Louisiana. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

On motion of Samuel L. Gilmore, city attorney, and James J. McLaughlin, assistant city attorney, solicitors for defendants herein, and upon suggesting to the court that defendants by reason of public duties which have so occupied their time that they have been unable as yet to furnish their solicitors with data sufficient to prepare their defence herein, and on further suggesting that they desire a delay of one month within which to plead or answer—

It is ordered that a delay of one month be granted defendants to plead or answer herein.

New Orleans, La., Feb. 27, 1897.

(Signed) CHARLES PARLANGE,
U. S. Judge.

19 *Motion for Extension of Time for Answer of Board of Assessors and Order. Entered and Filed March 6, 1897.*

U. S. C. C., East. Dist. of La. In Equity.

MRS. MARY G. T. STEMPEL
vs.
CITY OF N. O. ET ALS. } No. 12598.

On motion of F. C. Zacharie, of counsel for The Board of Assessors for the Parish of Orleans, State of Louisiana, respondents herein, and upon suggesting to the court that these respondents by reason and on account of respondents during the past two months—being the period of assessment—being so constantly occupied with the discharge and performance of their public duties that they have been unable to supply their solicitor with the data and information necessary to properly prepare their defence and answer herein, and on further suggesting that they desire a delay of one month's time from the date of the filing hereof in which to plead and answer, it is ordered that a delay of one month be granted respondents in which to plead and answer herein.

Decree pro Confesso against City of N. O. Entered and Filed April 10, 1897.

U. S. Circuit Court, Eastern Dist. of La. In Equity.

MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS. } No. 12598.

On motion of E. Howard M'Caleb, Esqr., solicitor for complainant, and on showing to the court that The City of New Orleans, one of the defendants herein, has failed and neglected to plead or
20 answer to complainant's bill within the one month's delay to it granted by order of Feb'y 27th, 1897, herein rendered—

It is now ordered that a decree *pro confesso* be rendered and entered against said defendant, The City of New Orleans.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Decree pro Confesso against Board of Assessors. Entered and Filed April 10, 1897.

United States Circuit Court, Eastern Dist. of La.

MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

On motion of E. Howard McCaleb, Esqr., solicitor for complainant, and on suggesting to the court that The Board of Assessors for

the Parish of Orleans, one of the defendants herein, has failed to plead and answer within the delay of one (1) month to them granted by order of court bearing date March 6th, 1897—

It is now ordered that a decree *pro confesso* be entered against said defendant, The Board of Assessors for the Parish of Orleans.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Answer. Filed May 10, 1897.

U. S. Circuit Court. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

To the honorable the judges of the United States circuit court for the fifth judicial circuit and eastern district of Louisiana:

21 The answer of The City of New Orleans, George B. Penrose, treasurer of said city of New Orleans, and The Board of Assessors for the Parish of Orleans, defendants herein, to the original bill of complaint of Mary G. T. Stempel, wife of Edward Stempel, guardian of the infants Fannie Tobin McCan, David Chambers McCan, Elizabeth McCan, and Charles Patterson McCan, complainants.

These defendants, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors and uncertainties and imperfections in the said bill contained, and not waiving, but specially reserving, their rights under the demurrer hereinbefore filed by these defendants herein, for answer to said bill, or to so much thereof as these defendants are advised it is material or necessary for them to make answer, answering, say:

(1.)

Defendants admit that the said Mary G. T. Stempel was duly appointed guardian of her minor children hereinbefore named by the honorable the supreme court of the county of Kings, State of New York, and that she duly qualified as such.

(2.)

Defendants admit that satisfactory evidence of said appointment as guardian aforesaid has been produced to the honorable the civil district court for the parish of Orleans, and that said court has authorized complainant, guardian, to sue and recover the property, rights, and credits belonging to said minors in this city, and to take possession of and remove the same out of this State; but defendants specially deny that complainants have removed the property and debts which then existed in this State outside of the State, but, on the contrary, defendants aver and declare that said debts and prop-

erty still existed and are in the State of Louisiana and in
22 this State, and were there at the time that the assessment of complainant was made.

(3.)

Defendants admit that in the matter of the successions of Hester C. and David McCan, Nos. 43186 and 39737 respectively of the docket of the civil district court for the parish of Orleans, the complainant and her wards and infants, the minors above named, were recognized sole legal heirs of said deceased and as such placed in possession of the property and estate of said deceased, and that said judgments are final and have been recorded in the conveyance office.

(4.)

Defendants admit that, beside the real estate inherited by said children from said decedents, they inherited and were placed in possession of a large amount of bonds and notes, but defendants declare that they do not know the amount thereof, and that they are unable to state whether or not the facts set forth in the fourth clause of complainant's bill of complaint are correct or not, and they demand same to be proven.

(5.)

Defendants admit that during the month of March, 1896, or thereabouts a demand was made upon the board of assessors for the annullment of the assessment on the assessment-rolls of the first municipal district and second representative district of this city in the name of "estate of D. C. McCan for money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, $15,000.00," and defendants admit that the said assessors declined to grant said petition; but defendants specially deny that said assessment was illegal, but, on the contrary, they assert and declare that said assessment was legal and valid, and the taxes levied there-
23 under are legal and valid, and defendants aver and declare that in declining to cancel said assessment the said board of assessors were but doing their full duty as imposed upon them by law.

(6.)

Defendants admit that between the 20th of March and 10th of April, 1896, complainants addressed a written communication to the city council renewing the request for the cancellation of said assessment, and defendants admit that the same was not granted by said council or any committee thereof, and defendants aver that in refusing to grant same the city council and its committees acted strictly in accordance with law, and the assessment was legal and valid, and the taxes levied thereunder are also legal and valid.

(7.)

Defendants The Board of Assessors say that they have no interest in answering the 7th clause of complainant's bill, as they have not

instituted any seizure proceedings. Defendants The City of New Orleans and George B. Penrose, treasurer, deny that their seizure or threatened seizure of the monies, etc., belonging to the estate of D. C. McCan for the payment of the aforesaid taxes levied under the said assessments were illegal or invalid, but, on the contrary, defendants aver that they were legal and valid, and their action therein was strictly in accordance with law.

(8.)

Defendants deny that the assessments aforesaid made by the board of assessors for the parish of Orleans are illegal, deny that the estate of D. C. McCan had ceased to exist at the time said assessment was made, and deny that the property assessed had been removed from the State or from the city of New Orleans at the time the said assessment was made.

(9.)

Defendants deny that said assessments were illegal and
24 void, and they now aver and the truth is that the said assessment entered on the roll of the board of assessors for the parish of Orleans on the estate of D. C. McCan on money loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000, was made and levied upon taxable property, rights, and credits situated within the jurisdiction of said board of assessors and subject to taxation in the city of New Orleans, and said debts, credits, etc., are now and were at the time of making said assessment within the jurisdiction of the State of Louisiana and of the city of New Orleans and are taxable in said city and State.

(10.)

Defendants deny that the city of New Orleans attempted to collect any taxes upon any bonds or credits which are not taxable under the laws of the State and of the United States.

(11.)

Defendants declare that they have no knowledge of the truth or falsity of the allegations made by complainant in her bill as to whether or not she has given bond in the county of Kings, State of New York, to the extent of $800,000.00 for the faithful performance of her duties as guardian of the aforesaid minors, and defendants deny that they or any of them ever intended or ever will intend to make any illegal seizure or advertisement of any of the property belonging to said complainants, but, on the contrary, that if any seizures and sales of said property are made or threatened — is to satisfy legal taxes legally assessed.

(12.)

Defendants deny that complainants have paid unto the city of New Orleans and to the treasurer thereof, or tax collector of the State of Louisiana all the taxes due by complainant and the

minors aforesaid, and they aver that the full amount of taxes
25 claimed on the assessment-rolls and tax bills on file herein is still due, owing, and unpaid by complainants to the city of New Orleans.

(13.)

Defendants deny that they or any of them ever combined, colluded, and confederated together with fraudulent intent and design of harassing, injuring, and oppressing the infant wards of complainant for the purpose of dispoiling them of their property or of any part thereof, but they aver that in all that they did and in all that they threatened to do they were acting strictly in accordance with the law in enforcing a legal and valid assessment and endeavoring to collect a legal and valid tax.

(14.)

Defendants deny that complainant is or ever was entitled to invoke the equitable writ of injunction for the purpose of forbidding and prohibiting the city of New Orleans and George B. Penrose, treasurer, from seizing, advertising, and attempting to sell any of the property, rights, or credits belonging to the said complainant or to the estate of D. C. McCan for the satisfaction of the taxes due for 1896, on the assessment hereinbefore referred to.

Defendant- den*ies* that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for these defendants to make answer to and not herein and especially well and sufficiently answered, confessed, traversed, and avoided or denied; and *this* defendant-, considering the premises aforesaid, humbly pray this honorable court that the preliminary writ of injunction hereinbefore granted be set aside and annulled, and that the prayer for the perpetuation of said injunction be denied and rejected, and that all the demands contained in the bill of complaint of oratrix herein be rejected and dismissed, and defendants humbly pray to be hence dismissed with reasonable costs and charges in their behalf most wrongfully sustained, and de-
26 fendants pray for all special, equitable, and general relief and orders herein as this honorable court may deem just and proper herein.

Respectfully submitted.

(Signed) F. C. ZACHARIE,
SAM'L L. GILMORE, *City* —,
JAS. J. McLOUGHLIN,
Ass't City Att'y,
Solicitors for Defendants.

(Signed) W. C. FLOWER, *Mayor.*

Motion to Set Aside Judgment pro Confesso and Order. Entered and Filed May 11, 1897.

U. S. Cir. Court. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS & AL. } No. 12598.

On motion of J. J. McLoughlin and F. C. Zacharie, solicitors for defendants, and upon suggesting the consent of solicitor for complainant:

It is ordered that the judgment *pro confesso* entered herein be set aside, and defendants be allowed to answer.

Order: Continuance.

Extract from the Minutes, June 12, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

In this cause, counsel being present, it is ordered that the same be continued to Monday, June 21, 1897, at 11 a. m.

Order: Case Continued for the Term.

Extract from Minutes, Monday, June 21, 1897.

MARY G. T. STEMPEL
vs.
CITY OF N. O. ET ALS. } No. 12598.

27 In this cause it is ordered that said cause be continued for the term, counsel for defendant- being present and taking notice thereof.

Order Fixing Case. Entered and Filed December 1, 1897.

United States Circuit Court, Eastern District of La., 5th Circuit.
In Equity.

MRS. MARY G. T. STEMPLE
versus
CITY OF NEW ORLEANS ET ALS. } No. 12598.

On motion of E. Howard McCaleb, Esq., solicitor for complainant—

It is ordered — this cause be fixed for trial for Friday, the 10 day of December, 1897, at 11 o'clock a. m., and that James J. McLoughlin and F. C. Zacharie, solicitors for defendants, be notified hereof.

Order: Case Continued.

Extract from the Minutes, Dec'r 10, 1897.

MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

By agreement of the counsel for the parties herein, it is ordered that this cause be continued to December 17, 1897, at 11 a. m.

Hearing of Cause, Note of Evidence, and Submission.

Extract from the Minutes.

November Term, 1897.

NEW ORLEANS, FRIDAY, *December* 17, 1897.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

28 MARY G. T. STEMPEL
vs.
CITY OF NEW ORLEANS. } No. 12598.

This case came on to be heard upon the bill of complaint, exhibits, answer, replication, proofs, and testimony.

Present: E. Howard McCaleb, solicitor for the complainant; F. C. Zacharie, solicitor for board of assessors; J. J. McLoughlin, solicitor for city of N. O.

Whereupon counsel for the complainant offered the following evidence in her behalf, to wit:

1. Decree of supreme court of La., succession Hester Calloway M'Can, # 11793, dated Dec. 2nd, 1895.

2. Order authorizing guardian to take possession of and remove property from this State and affidavit of Eugene D'Herete, d'y cl'k, in suc'n Chas. P. M'Can, 1884, civil dist. court, parish Orleans.

3. Testimony Albert Baldwin.

4. Copy assessment-roll city N. O., sq. 19, No. 385, in the name est. D. C. M'Can, marked Exhibit "O."

5. Affidavit Arthur B. Leopold & exhibits.

6. Receipt for personal taxes est. D. C. M'Can, 1896.

7. Notices from treasurer city N. O., Exhibits "7," dated May 21, June 23, & Dec. 2d, 1896, & Jan'y 7th, 1897.

8. Four (4) bonds & undertakings given by Mary Tobin Stempel as guardian with American Surety Co. of N. Y. as surety in favor of the minors Fanny Tobin, Chas. Patterson, David Chambers, & Kate Elizabeth M'Can, each for $200,000.00, in the supreme court, Co. of Kings, State of N. Y., Exhibits "8."

9. Judgment of the civil district court for the parish of Orleans, succession of D. C. McCan, No. 59737, recognizing the minors McCan as the sole legal & forced heirs of D. C. McCan & putting them in

possession through their guardian (Mrs. Stempel) of the property of said deceased.

29 And the counsel for defendants offered their evidence, and the case was then argued by the solicitors for the respective parties and submitted; when the court took time to consider.

COMPLAINANT'S EVIDENCE.

Decree of Supreme Court of La., Succession of Hester Calloway McCan, # 11793, Dated Dec. 2nd, 1895.

Supreme Court of the State of Louisiana

CLERK'S OFFICE, NEW ORLEANS,
MONDAY, *December 2nd*, 1895.

Succession of HESTER CALLOWAY McCAN, on Petition of MARY TOBIN STEMPEL, Guardian of Her Minor Children. No. 11793.

Appeal from the civil district court for the parish of Orleans.

Mr. Justice Miller delivered the opinion and decree of the court in the words and figures following, to wit:

It is therefore ordered, adjudged, and decreed that the judgment of the lower court be avoided and reversed.

It is further ordered, adjudged, and decreed that the minors Fanny Tobin McCann, David Chambers McCann, Kate Elizabeth McCann, and Charles Patterson McCann be recognized as the legal heirs of Hester Calloway McCann, and as such, through their guardian, Mary Tobin Stempel, be, and they are, put in possession of the property of said deceased, Hester Calloway McCann; that the provision of the will of said deceased giving the possession, control, and administration of said property to Harry H. Hall

30 and David C. McCann be, and is hereby, decreed to be void and of no effect; that all questions not covered by this decree be reserved, and that appellees pay costs.

A true copy.

Clerk's office, New Orleans, January 18th, 1897.

[SEAL.] PAUL E. MORTIMER,
Deputy Clerk.

Order authorizing guardian to take possession of and remove property from this State and affidavit of Eugene D'Herete, d'y cl'k, in suc'n Chas. P. M'Can, 1884, civil dist. court, parish Orleans. Filed Dec. 17, 1897.

Civil Dist. Court, Parish of Orleans, "Div. D."

[Cancelled law stamp.]

Succession of CHARLES P. McCAN. No. 18811.

On motion of E. Howard McCaleb and Saunders, Miller, Smith & Hirsch, attorneys for Mrs. Mary T. Stempel, guardian of the minors Katie Elizabeth McCan, Fannie Tobin McCan, David Cham-

bers McCan, and Charles P. McCan, sole surviving issue of her marriage with her first husband, the said late Charles P. McCan;

And on showing to the court that according to the annexed affidavit and certificate from the clerk of this court public advertisements have been made in the New Orleans Picayune, the New Orleans Times Democrat, and the New Orleans Bee, in French and English, for the period of thirty days, as required by law, calling upon all persons having claims against said minors to show cause why said guardian should not be authorized to take possession of and remove from this State the property of said minors; that no opposition or objection has been filed thereto and no claims have been presented against the property or estate of said minors; that all the debts of said minors have been paid, and that no debts against them exist in this State—

31

The premises considered:

It is now ordered, adjudged, and decreed that Mrs. Mary T. Stempel, wife of Edward Stempel, residing in the city of Brooklyn, State of New York, in her capacity of guardian of said minors, Katie Elizabeth, Fannie Tobin, David Chambers, and Charles Patterson McCan, be, and she is hereby, authorized to take possession of and remove from this State all the movable property belonging to said minors.

N. O., January 23d, 1895.

(Signed) N. H. RIGHTOR, *Judge.*

A true copy.

[SEAL.] (Signed) F. E. PETERSON, *D'y Cl'k.*

Affidavit of D'y Cl'k. Filed Dec'r 17, 1897.

Civil Dist. Court for the Parish of Orleans, "Div. D."

[Cancelled law stamp.]

Succession of CHAS. P. McCAN. #18811.

Eugene D'Hérété, deputy clerk of this court, being duly sworn, says that the application of Mrs. Mary Tobin Stempel, of Brooklyn, Kings county, State of New York, mother and guardian of the minors Kate Elizabeth, Fannie Tobin, Charles Patterson, and David Chambers McCan, to take possession and remove from the State of Louisiana the property belonging to said minors has been published in the New Orleans Times-Democrat and N. O. Picayune on the 20, 24, & 31 of December, 1894, and 3d, 9th, & 14th of January, 1895, in the English language, and in the New Orleans Bee on the 19th, 24th, & 28th of Dec'ber, 1894, and 3d, 9th, 14th of January, 1895, in the French language, and that no opposition has been filed thereto.

32

X EUG. D'HÉRÉTÉ, *D'y Cl'k.*

Sworn to and subscribed before me this 23d January, 1895.

X P. A. DUCOING, *D'y Cl'k.*

A true copy.

[SEAL.] (Signed) F. E. PETERSON, *D'y Cl'k.*

EXHIBIT "3."

Testimony of Albert Baldwin for Complainant.

United States Circuit Court, Eastern District of Louisiana.

MARY G. T. STEMPLE
vs.
CITY OF NEW ORLEANS. } No. 12598.

Testimony taken in the above numbered and entitled cause on behalf of complainants on the 4th day of June, 1897, before Henry J. Carter, Esq., special examiner appointed under order of court, and reported by R. H. Carter, stenographer.

Appearances.

E. H. McCaleb, Esq., counsel for complainant.
J. J. McLoughlin, Esq., counsel for the city of New Orleans.
F. C. Zacharie, Esq., counsel for board of assessors.

33 ALBERT BALDWIN, witness sworn on behalf of complainant, testified as follows:

Direct examination.

By Mr. MCCALEB:

Q. Where do you reside?

A. In New Orleans.

Q. Are you acquainted with Mrs. M. G. T. Stemple, wife of Edward Stemple?

A. I am.

Q. Do you know her minor children by her first husband, Charles P. McCan, and what are their names?

A. Yes, sir; David Chambers is one, Charles Patterson is two, Fanny Tobin is three, and Kate Elizabeth is four—two girls and two boys.

Q. Mr. Baldwin, what property did Mrs. Stemple—what property, in so far as money advanced, money loaned, advances, and so on, cash on hand, bills receivable, and so on, did Mrs. Stemple as guardian acquire for her minor children as heirs of David C. and Hester Calloway McCan? State what the value of the—first, what these assets consist of.

A. The assets—if I understand the question, it is, What did the assets consist of that these minor children inherited from David C. and Hester——

Q. Yes, sir.

A. Largely real estate and securities, amounting in all to a valuation I should estimate at $800,000.

Q. What was the nature and character of the bills receivable that were turned over by the representative of the estate of D. C. McCan and Hester C. McCan to Mrs. Stemple?

A. They were largely mortgages.

34 Q. There is an assessment on the rolls of the 1st municipal and second representative district of the city of New Orleans of money loaned, notes, credits, all bills receivable for money loaned or advanced, and all credits of any or other description—$800,000—and of money in possession, deposited or in hand—$15,000—for the year 1896. What have you to say to that assessment?

A. They were not worth that amount of money; that would not be a proper valuation of those——

Q. Of what value were the notes and other obligations on which monies had been loaned?

A. I should roughly estimate—I should say $500,000.

Q. They consisted, you say——

A. Largely of mortgage notes——

Q. Notes secured by mortgage——

A. Bonds, stocks.

Q. What was done with these notes and in whose——

A. They were turned over to the Guarantee Company of New York—Fidelity and Trust Company.

Q. Is that the name of it? Is it not the American Surety Company?

A. I think it is the American Surety Company. It is the one that W. L. Trenholm used to be president—American Surety Company.

Q. Have these obligations been since in the possession of this American Surety Company?

A. They have.

Q. And under their control?

A. Yes, sir.

Q. Of this what amount, if any, was invested in premium bonds issued by the city of New Orleans?

A. There was about $120,000.

Q. And in consolidated bonds of the city of New Orleans?

35 A. $22,000.

Q. And in the bonds of the State of Louisiana known as Louisiana new consols and baby bonds?

A. $61,000. I guess more. Wait a moment. $80,000.

Q. $88,040.00?

A. Yes, sir.

Q. How much would be the aggregate of premium bonds, the consolidated bonds of the city of New Orleans, and the Louisiana consols and baby bonds?

A. About $230,000.

Q. Is this included in the $500,000 or exclusive of that?

A. It is inclusive.

Q. Have the taxes on the real estate for 1896 all been paid?

A. Yes, sir; and also the taxes on the personal property, household furniture.

Q. Is this American Surety Company on the bond of Mrs. Stemple as guardian?

A. Yes, sir.

Q. Do you know what amount of bond she had to give in New York?

A. I think it is $800,000, without being able—I think it is $800,000.

Q. Do you know whether or not she has to pay a commission to this company to be her surety on her bond as guardian?

A. Yes, sir.

Q. About how much is the annual commission?

A. It is very small, really. I think it is less than $1,000. There is a lawyer here who has charge of the court process and the surety—probably $1,000.

Q. And this surety company requires that these securities should be in their possession?

A. Yes, sir.

36 Q. Where is this American Surety Company domiciliated at?

A. New York city.

Q. And where is the domicile and residence of Mrs. Stemple and her minor children?

A. In New York, also.

Cross-examination.

By Mr. McLOUGHLIN:

Q. You are very familiar with all these details and this estate?

A. Quite so.

Q. What reason have you—what makes you so familiar—what is your relation to the estate?

A. Simply representing the guardian.

Q. You are the agent of the guardian?

A. Yes, sir.

Q. Holding her power of attorney?

A. Yes, sir.

Q. All of these mortgage notes—about how many of them are on property situated in this city?

A. I should say 80 per cent.

Q. 80 per cent. of how much?

A. Of the amount, whatever it is.

Q. What is the amount, about?

A. The inventory will show that.

Q. These notes that are on property in this city, where are they now; the notes themselves; not under whose control, but where are they?

A. Some of them have been paid; settled, so far as it is possible.

Q. But those that are not paid.

A. They are now in the hands of the surety company, agent of the surety company here.

Q. Where were they at the time this assessment was made,

37 which was from January to March, 1896?

A. I think they were still with the agent.

Q. With the agent of the company here?

A. Yes, sir.
Q. Who is the agent of the company here?
A. Mr. Palfrey.
Q. The cashier of the New Orleans national bank?
A. Yes, sir; appointed by the surety company.
Q. So these notes which belong to this estate are kept for convenience in the New Orleans national bank in the hands of Mr. Palfrey?
A. They are, largely.
Q. And collected by him?
A. With the assistance of others.
Q. When that money is collected is it deposited in the New Orleans national bank to the credit of this estate?
A. Yes, sir.

By Mr. ZACHARIE:

Q. You spoke about some premium bonds?
A. Yes, sir.
Q. What other bonds were there besides premium bonds?
A. I think there were consolidated, Louisiana fours, and some baby bonds; that we don't want to talk about.
Q. Where are these bonds?
A. Where are they?
Q. Yes.
A. Most of the premium bonds—they were all with the American Surety Company, but in the control of Mr. Palfrey as the agent of the American Surety Company.
Q. They are here in the city of New Orleans?
A. I presume—I have not seen them, but I presume they
38 are; I take it for granted; I don't know.
Q. Where were they between the first of January and first of March, 1896?
A. I think they were here; I think they were in the city.
Q. Mr. Palfrey, as the agent of the surety company, collects anything that falls due upon these bonds—interest or premium that may be drawn?
A. Oh, evidently he is the one; he represents them and collects them.

By Mr. MCLOUGHLIN:

Q. Did these bonds and mortgage notes ever go to New York physically—ever sent there?
A. Never, to my knowledge.
Q. Then, to the best of your knowledge and belief, they have always remained in this city?
A. Yes, sir.
Q. It was an apparent title or right of control?
A. Yes, sir. In other words, her application was made even before the decision of the court connecting—where Mr. Hall was connected; where Mr. Hall was. I think I went to New York; I knew the necessity of a bond. Their conditions were that all these prop-

erties--personal properties—should all be turned over to them. Then under those circumstances they would make a low rate for the bond; in other words, a bond. We will say it was six hundred or eight hundred thousand dollars. It was quite a large amount; ran close to a million. The rate would have amounted to many thousand dollars per annum, except that they had an agent and had possession of the securities. Under those circumstances we got a bond and a lawyer attended to the business there in the court. The rate amounted, I think, near a thousand dollars per annum.

39 Q. You say that all of *these* personal estate amounted to $800,000—that it is assessed to that?

A. I think it was. I mean to say that my valuation upon the estate—the whole of it—real estate and everything else, would be $800,000. If you desire me to go into a further explanation, because I have nothing to conceal, there was something like $75,000 of mortgages that appeared on the face to be worth dollar for dollar, and the loss in selling was some $36,000. Now, there were many things of that stripe. You may take the Gibbes Morgan mortgage——

Mr. ZACHARIE to stenographer: Don't put the details down.

A. I want to give you an idea of how I formed my estimate. The face of the inventory was over a million dollars, but, notwithstanding the face of the inventory was over a million, it was an inventory to make a commission on; probably it was thoroughly correct to put it over a million, but to take hold of the things and collect them—I found a mortgage that shows a loss where the property is given probably of 30 or 40 per cent. It is a remarkable thing, Mr. McLoughlin; you have had some experience. That was the situation.

Q. What is your valuation of the whole estate?

A. I should say the whole estate is worth $800,000.

Q. That includes real estate?

A. Yes, sir; and personal property.

Q. How much of that was personal; about how much?

A. I should say personal property, $500,000. I am really guessing. I say $500,000 or $300,000 offhand.

Q. Was all of that personal property given to the security company as security?

A. Yes, sir; everything.

40 Q. And they accepted this personal property as security for a bond of how much?

A. A very large bond. I don't know whether it was six hundred or eight hundred thousand dollars.

Q. Do you know how much deposit this surety company requires when a bond of this kind is given, how much in relation to the amount of the bond?

A. It is on the same basis if you come into a bank and want to get a loan at a low rate of interest; if you come in and offer Mr. McLoughlin as endorser you get it at 6 per cent.; if you come in

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

and get it on your own name probably seven per cent. would be the right rate. So it is with a guarantee company. The guarantee company, they made it so low, which they wouldn't do under any other circumstances.

Q. What I want to get at is this, Does not the surety company demand in New York city deposits in consideration of this low rate—a deposit equivalent to the value of the bond?

A. No.

Q. How close does it come?

A. They were willing to give the bond—there was talk—it was all done through the attorney, Mr. Whitford, in the Equitable building. Mr. Trenholm, him I know. I didn't come in contact, but he made the arrangement. Mr. Trenholm gave me to know that I had something to do with the change; possibly I did or did not; I don't know; all people are vain. I might have had influence in making the rate less, and then the bank he knew, and Mr. Palfrey accepting as agent, that was the whole—they had agents here notwithstanding, but they have nothing to do with it. Mr. Palfrey is a special agent for this special case.

Q. What I want to get at is this: What was the valuation of the personal property that was pledged to this surety company
41 as a collateral for the securing of this bond, what was the valuation of the security?

A. I think about $500,000 would be a fair estimate.

Q. Do you mean to say that this is the security company's estimate?

A. I take it for granted that it is.

Q. Of the personal property?

A. Yes, sir.

Q. That was pledged?

A. Yes, sir.

By consent of parties it is agreed that this case be fixed for hearing on the merits upon the testimony taken and such documentary evidence as the respective parties desire to offer before his honor Judge Don A. Pardee on Saturday, June 12th, at 11 o'clock a. m.

(Here follows assessment-roll, marked pp. 42 and 43.)

44 EXHIBIT "5."

Affidavit of Arthur B. Leopold & Exhibits.

Before me, the undersigned authority, personally came and appeared Arthur B. Leopold, who, being duly sworn, deposes and says:

That he is in the employ of E. Howard McCaleb, Esq., attorney-at-law; that on the 17th day of March, 1896, he delivered to Mr. Fendal Horn, the duly authorized secretary of the board of assessors for the city of New Orleans, an envelope containing an application in the form of a petition, with affidavit and grounds, to change assessments on real estate from estate of D. C. McCan to that of Mrs. Mary G. T. Stempel, guardian, and to cancel assessments of money

loaned, advanced cash on hand, bills receivable, etc., in the office of the board of assessors of the city of New Orleans, room 15, city hall, in the hands of said Fendal Horn; that said petition was accompanied by copies of two judgments rendered in the successions of D. C. McCan and Mrs. Hester C. McCan, the former by the civil district court for the parish of Orleans and the latter by the supreme court of the State of Louisiana, sending the minors, Fanny Tobin McCan, Kate Elizabeth McCan, David Chambers McCan, and Charles Patterson McCan, into possession of the property belonging to said successions, through their guardian, Mrs. Mary G. T. Stempel; that the annexed application, marked "A," is a duplicate copy of said application so delivered by affiant to Fendal Horn, secretary of the board of assessors aforesaid.

That subsequently, on the 9th day of April, 1896, at the request of E. Howard McCaleb, he delivered to the clerk of the committee on assessments of the city council of New Orleans a petition of Mrs. Mary G. T. Stempel, guardian, renewing the said application
45 for the cancellation of assessments on money loaned, advanced, etc., $800,000, and cash on hand, bills receivable, etc., $15,000, a copy of which is hereto annexed, marked Exhibit "B."

(Signed) ARTHUR B. LEOPOLD.

Sworn to and subscribed before me this 16th day of January, A. D. 1897.

[SEAL.] (Signed) F. J. DREYFOUS,
Notary Public.

EXHIBIT "A" (Attached to Affidavit).

NEW ORLEANS, LA., *March 17th*, 1896.

To the board of assessors for the parish of Orleans.

GENTLEMEN: The petition of Mrs. Mary G. T. Stempel, wife of Edward Stempel and guardian of her minor children, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, all residing in the State of New York, respectfully shows:

That your petitioner and her above-named minor children all reside in the State of New York.

That on the 20th day of November, 1894, your petitioner was duly appointed and qualified as guardian of her above-named minor children by the honorable the supreme court of the county of Kings, State of New York.

That subsequently she produced satisfactory evidence of her appointment, as aforesaid, to the honorable the civil district court for the parish of Orleans, division "D," and was authorized to sue for and recover the property, rights, or credits belonging to said minors in this State and to take possession of and remove their property from this State, after furnishing satisfactory proof to the
46 court that no debts exist in this State, all of which will more fully appear by the records in the succession of Charles Pat-

terson McCan, No. 18811 of the docket of the civil district court, division "D."

That your petitioner instituted suit in the successions of Hester Calloway McCan and David C. McCan, Nos. 43186 and 39737 of the docket of the civil district court for the parish of Orleans, and said minors were recognized as the sole forced heirs of said Hester Calloway McCan and David C. McCan, and as such, through your petitioner, their guardian, put in possession of the property of said deceased.

That your petitioner has caused said judgments to be duly recorded in the conveyance office of the parish of Orleans, all of which will more fully appear by duly certified copies of said judgments, herewith filed for greater certainty and marked "A" & "B."

That your petitioner desires to have the real estate situated in this city and heretofore assessed in the name of the estate of David C. McCan entered upon the rolls and assessed in her name, as the guardian of the minor children above named, which real estate is described as follows upon the assessment-rolls of this city, to wit:

Square No. 7, first municipal district, bounded by Foulton, Notre Dame, Front, & Julia streets.

Lot No. 10, square 139, bounded by Constance, Gaiennie, Magazine, & Erato, in the first municipal district.

Square No. 6, in the first municipal district, bounded by Foulton, Front, Notre Dame, and Girod streets.

Square 139, in the first municipal district, bounded by Gaiennie, Constance, Magazine, and Erato streets.

Square 199, in the fourth municipal district, bounded by
47 Third, Coliseum, Prytania, and Second streets.

Square 201, in the fourth municipal district, bounded by Coliseum, Prytania, Philip, and First streets.

Square 172, in the fourth municipal district, bounded by Ches-nut, St. Andrew, Josephine, and Coliseum streets.

That there appears upon the assessment-rolls of the first minicipal and 2nd representative district of this city, in the name of the estate of David C. McCan, on moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000.00.

That said assessment, as aforesaid, should be cancelled, annulled, and set aside upon the following grounds and for the following reasons, to wit:

That your petitioner's minor children aforesaid, who have been sent into possession of the property of said David C. McCan, and to whom the same belongs, as well as your petitioner, are residents and citizens of the State of New York.

That in the case of the State Tax on Foreign-held Bonds (15 Wallace, U. S., 300) it was held that "the power of taxation is limited to persons, property, and business within her jurisdiction."

Again, in Murray *vs.* Charleston, 96 U. S., 432, it was held that "debts are not property. A non-resident creditor of a city cannot be held to be, in virtue of a debt which it owes him, a holder of property within its limits."

In Kirtland *v.* Hotchkiss, 100 U. S., 491, it was again held that

" for the purpose of taxation a debt has its situs at the residence of the creditor and may be there taxed."

The same doctrine has been frequently recognized by the supreme court of the State of Louisiana.

In V. & A. Meyer & Co. *v.* Sheriff, 41 Ann., 645, it was held that " debts have their situs at the domicile of the creditor. Being located at the domicil of the creditor, a debt is not assessable
48 or taxable elsewhere."

And in Paving Co. *v.* City, 41 An., 1015, it was held that " debts and other incorporeal rights when treated as property for the purpose of taxation can be assessed only at the domicil or place of residence of the creditor, without regard to the domicil of the debtor. Hence debts due to a foreign corporation by residents of this State cannot be taxed in this State."

And in Liverpool & London & Globe Insurance Company *vs.* Board of Assessors, 44 Ann., 760, it was held that " a non-resident creditor of a State cannot be said to be, in virtue of a debt which a resident owes him, a holder of property within its limits. The credit is not within the State's jurisdiction, and of no value to the debtor, and is not property within the State, but property of the creditor, taxable at his place of residence.

" Tangible movable property may be taxed where situate under a special statute which provides for its taxation."

And in Railey *v.* Board of Assessors, 44 A., 765, it was held that " if a right be incorporeal and intangible, such as a debt, which is not the property of the debtor in any sence, being his obligation and having value only in the hands of the creditor, its situs is necessarily where it is owned and not where it is due."

And in Clason *v.* City of New Orleans, 46 A., 1, the supreme court has recently decided that " moneys standing to the credit of a non-resident firm on the books of a New Orleans bank are not taxable. The relations between a bank and its customers are those of a creditor and debtor. The moneys are not specially deposited to be identically restored. They go into the mass of the bank's money with the understanding that they might be used and should be the basis of items of a debit and credit account. Such a debt is not distinguishable from those due to the foreign firm from any
49 other cause."

For these reasons your petitioner complains and says that the aforesaid assessment in the name of the estate of D. C. McCan on moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $15,000.00, is illegal and should be set aside, cancelled, and annulled.

Wherefore petitioner prays that the aforesaid assessment upon real estate or immovable property above described in the name of the estate of D. C. McCan, situated in the city of New Orleans, be changed to and assessed in the name of Mrs. M. G. T. Stempel, guardian of her minor children above named, and that the assessment on moneys loaned, advancements, $800,000.00, and cash on hand, bills receivable, etc., $15,000.00, be erased, cancelled, and stricken from the rolls as illegal and erroneous.

And petitioner prays for all general and equitable relief.

(Signed) E. HOWARD M'CALEB,
Attorney for Petitioner.

Albert Baldwin, *who*, after first being duly sworn, deposes and says:

That he is the agent and attorney-in-fact of Mrs. Mary G. T. Stempel, guardian of her minor children named in the foreign petition; that all the facts and allegations stated in the foregoing petition are true and correct to the best of his knowledge and belief.

(Signed) A. BALDWIN.

Sworn to and subscribed before me this 17th day of March, A. D. 1896.

(Signed) CHAS. T. SONIAT, *Not. Pub.*

50 EXHIBIT "B" (Attached to Affidavit).

NEW ORLEANS, *April 9th*, 1896.

To the honorable committee on assessments of the city council of New Orleans.

GENTLEMEN: The petition of Mrs. Mary G. T. Stempel, wife of Edward Stempel and guardian of her minor children, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan, all residing in the State of New York, respectfully shows that on or about the 17th day of March, 1896, she filed with the board of assessors of the parish of Orleans her petition praying that the assessment upon real estate or immovable property mentioned in said petition and fully described therein in the name of the estate of D. C. McCan, situated in the city of New Orleans, be changed to and assessed in the name of Mrs. Mary G. T. Stempel, guardian of her minor children above named, and she also prayed that the assessment on moneys loaned, advanced, etc., $800,000.00, and cash on hand, bills receivable, etc., $150,000.00, be erased, cancelled, and stricken from the rolls as illegal and erroneous.

That said board of assessors have neglected and failed to comply with her petition.

She now reiterates and reavers all the facts and allegations therein contained.

Wherefore she prays that the committee on assessments of the city council of New Orleans do grant the prayer of said petition, and that the assessment upon real estate or immovable property mentioned in said petition and assessed in the name of the estate of D. C. McCan, situated in the city of New Orleans, be changed

51 to and assessed in the name of your petitioner, Mrs. Mary G. T. Stempel, guardian of her minor children above named, and that the assessment on moneys loaned, advanced, etc., and on cash on hand, bills receivable, etc., be erased, cancelled, and stricken from the rolls as illegal and erroneous, and she makes said petition a part of this her application.

(Signed) E. HOWARD M'CALEB,
Attorney for Petitioner.

Receipt for Personal Taxes Est. D. C. M'Can, 1896. Offered and Filed Dec. 17, 1897.

No. 385, Bis.—City of New Orleans—Tax of 1896—On personal property.

Received June 4, 1896, of est. D. C. McCan fifty $\frac{00}{100}$ dollars for tax as described below:

Assessment.		For what purpose.		Amount.
Horses, cows, etc		City alimony	10 mills.	
Vehicles				
Merchandise or stock in trade				
Money at interest, credits, bills receivable				
Money in possession				
Shares of stock				
Furniture, etc	1,500	Interest and redemption, city bonds, under sec. 7, of act 110 of 1890	10 "	
Statuary, paintings, etc	500			
Diamonds, jewelry, etc	500			
Stock or interest in water craft				
Trackage, etc., of railroads				
Machinery and all motive power				
Judgments, suits, and causes in action				
Franchises, patents, copyrights, trade-marks, privileges, and charters, all canals and other ways of communication				
Bonds of all kinds				
Total taxable personal property	2,500	Total rate of tax	20 mills.	$50 00

JNO. F. BUTTS, *For Comptroller.* CH'S COUTURIE, *For Treasurer.*

[Written across the face:] Paid by Alb. Baldwin, att'y-in-fact for Mrs. M. G. T. Stempel, guardian. CH'S COUTURIE, *Tax Rec.*

As-essm't district.	No. of square.	Where situated.	Amount.
12	199	G. Coliseum & Third Res	

53 EXHIBITS "7."—Notices from Treasurer City N. O., Dated May 21, June 23, & Dec. 2nd, 1896, & Jan'y 7th, 1897.

Office of treasurer city of New Orleans, room No. 2, city hall.

NEW ORLEANS, *Jan. 7th*, 1897.

M Estate D. C. McCan, 747 Fulton —, c. o. E. Howard McCaleb, Sr.

DEAR SIR: You have been notified officially that I must proceed according to law to enforce collection of delinquent city taxes on personal property for the year 1896 assessed to you on credits, etc., $800000; money, etc., $1,500.00, in square No. 3, 19 assessment district, but, from courtesy and to avoid further expense and the annoyance of seizure and advertisement or rule in court to produce property, I call your attention to the necessity for immediate settlement.

The amount due is stated below.

Very respectfully, GEO. B. PENROSE, *Treasurer.*

1896.	Taxes	$16,300.
	Interest	923.66
	Total	$17,223.66
189–.		
189–.		
	Costs	.55
	Grand total	$17,224.21

Office of treasurer of the city of New Orleans, room No. 2, city hall.

54 NEW ORLEANS, *Dec. 2nd*, 1896.

M. Est. D. C. McCan, 747 Fulton St.:

You are hereby notified to deliver up to me, in my capacity as treasurer of the city of New Orleans, your accounts for "money loaned on interest, all credits and bills receivable for money loaned or advanced," and cash liable for city taxes, aggregating $16,300.00, assessed against *it* for years 1896, as set forth more fully in accompanying demand and notice of seizure, or as much thereof as may be necessary to realize at public sale the amount of the said taxes, with interest and costs, the total sum due being $16,948.02.

(Signed) JNO. W. WATSON,
Treasurer City of New Orleans ad Interim.

Office of treasurer of city of New Orleans, room No. 2, city hall.

NEW ORLEANS, *Dec. 2nd*, 1896.

Est D. C. McCan, 747 Fulton St.

SIR: You are delinquent for taxes on movable property due the city of New Orleans for the years mentioned below. You are hereby notified to come forward within three days from date of service of this notice and pay the same, in default of which I will proceed to seize and take into my possession so much of said movable property

as may be requisite to pay the said taxes, with interest and costs, or place a keeper upon the same preparatory to advertisement and sale, or take such other steps against other property or assets
55 you may have as may be necessary to collect the said taxes, etc., by virtue of the authority vested in me by the constitution and laws of the State of Louisiana and of the ordinances of the city of New Orleans.

Assessments on the rolls, 3 assessment district, square No. 19.

1896.	Money at interest, credits, etc.....	$800,000.00
	Money in possession....	1,500.00
189–.	....	
189–.	....	
1896, bill No. 385; 189–, bill No. —; 189–, bill No. —.		
1896.	... .	$16,300.00
		647.47
		$16,947.47
189–.	... .	
189–.	....	
	Costs.....	.55
	Grand total.....	$16,948.02

Respectfully,
(Signed) JNO. W. WATSON,
Treasurer of the City of New Orleans ad Interim.

(Printed in black ink in left-hand margin of page:) Bring this notice with you.

Bill No. 385.

City attorney's office, room 21, city hall.

Personal taxes.

NEW ORLEANS, *June* 23, 1896.

M Est. D. C. McCann, 747 Fulton St.

DEAR SIR: You are reported to this office as being delin-
56 quent for your personal tax for the year 1896, amounting to $16,350, with interest, at the rate of ten per cent per annum, from June 22d, 1896.

Under ordinance 5124, C. S., it is made the duty of this office to publish a list of delinquent tax debtors in the newspapers for ten consecutive days, and your name will be published in that list unless the tax due by you is paid immediately.

So soon as the publication of said list is made you will be legally notified of your delinquency, seizure of your property will follow, and additional costs and trouble will be thus incurred.

I beg that you will at once call at the office of the city treasurer,

room No. 2, city hall, entrance on Lafayette street, and pay the amount due to the city by you.

Very respectfully,

W. B. SOMMERVILLE,
Assistant District Attorney.

Postal card (attached) addressed to "Est. D. C. McCan, 747 Fulton —, city."

Bill No. 385.

Office of treasurer city of New Orleans—Euclid Borland, treasurer.

NEW ORLEANS, *May 21st*, 1896.

DEAR SIR: The tax assessed against you on personal property for the year 1896, to amount of $16,350.00, will become delinquent on June 22d, 1896, from which time 10 % per annum interest will be due.

It becomes my duty under the law to enforce collections. I beg that you will call at this office at once and settle, avoiding further expense.

EUCLID BORLAND, *Treasurer.*

Bring this notice with you.

57 EXHIBITS "8."—Four (4) bonds & undertakings given by Mary Tobin Stempel, as guardian, with American Surety Co. of N. Y. as surety, in favor of the minors, Fanny Tobin, Chas. Patterson, David Chambers, & Kate Elizabeth M'Can, each for $200,000.00, in the supreme court, Co. of Kings, State of N. Y.

Bond in Favor of Kate Elizabeth McCan.

The People of the State of New York, by the grace of God free and independent, to all to whom these presents may come, Greeting:

Know ye that we have inspected the files and records in the office of the clerk of the county of Kings, at the city of Brooklyn, [SEAL.] in said county; do find a certain undertaking remaining there on file of records in the words and figures following, to wit:

Know all men by these presents that we, Mary Tobin Stempel, of Mt. Vernon, N. Y., general guardian of the estate of Kate Elizabeth McCan, a minor, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto the said Kate Elizabeth McCan, the minor aforesaid, in the sum of two hundred thousand dollars ($200,000), lawful money of the United States of America, to be paid to the said Kate Elizabeth McCan, her heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

58 Sealed with our seals and dated the 28th day of February, 1896.

Whereas the above-named Kate Elizabeth McCan is entitled to a

certain distributive share of the estate of Hester Calloway McCan; and

Whereas the said Kate Elizabeth McCan is a minor, and the said Mary Tobin Stempel has been duly appointed by the supreme court of the State of New York, county of Kings, general guardian of the estate of the said minor;

Whereas, by an order of said supreme court made the 28th day of February, 1896, the distributive share of the estate of Hester Calloway McCan and the income of the real estate belonging to the said minor, Kate Elizabeth McCan, and payable to the said minor, was directed to be paid to the above-named Mary Tobin Stempel, general guardian of the said minor, upon her tendering to the said court the bond in the said order required, conditioned as therein set forth:

Now, therefore, the condition of this obligation is such that if the above-bounden Mary Tobin Stempel shall and will faithfully apply said distributive share and render a just and true account of the application thereof in all respects to any court having cognizance thereof when thereunto required, then this obligation to be void; otherwise to remain in full force and virtue.

MARY TOBIN STEMPEL. [L. S.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By DAVID B. SICKELS,
2nd Vice-President.
SAMUEL S. PERRY, *Attorney.*

Signed, sealed, and delivered in the presence of—
L. E. CARMAN.

59 STATE OF NEW YORK, }
County of New York, } *ss:*

On this 28th day of February, 1896, before me personally appeared Mary Tobin Stempel, general guardian of the person and estate of Kate Elizabeth McCan, a minor, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Richmond Co.'s.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 28th day of February, 1896, before me personally appeared David B. Sickels, 2nd vice-president of the American Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the 2nd vice-president of the American Surety Company of New York; that he knew the corporate seal of said

company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of trustees of said company, and that he signed said instrument as 2nd vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said David B. Sickels further said that he was acquainted with Samuel S. Perry, and knew him to be one of the attorneys of said company; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry, and was thereto subscribed by the like order of the said board of trustees and in the pres-
60 ence of him, the said David B. Sickels, 2nd vice-president.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Rockland Co.'s.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and they hereby are, and each of them is authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for — on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed, such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

CITY AND COUNTY OF NEW YORK, *ss*:

—, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolutions with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 28th day of February, 1896.

SAMUEL S. PERRY, *Attorney.*

O K. R.

Endorsed: Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Filed & rec. Feb'y 28, 1896.

Endorsed: N. Y. supreme court. In the matter of Kate Elizabeth McCann. Undertaking Feb'y 28, 1896. Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Alexander & Green, att'ys, 120 Broadway. Filed & rec. Feb'y 28, 1896.

61 All which we have caused by these presents to be exemplified and the seal of our said court for said county to be hereunto fixed.

Witness Hon. William W. Goodrich, presiding justice of our supreme court in and for the second judicial department of said State, this 8th day of June, 1897, and in the 121st year of the Independence of the United States.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

I, William W. Goodrich, presiding justice of the supreme court of the State of New York in and for the second judicial department thereof, do hereby certify that Jacob Worth, whose name is subscribed to the preceding exemplification, is the clerk of the county of Kings and clerk of the supreme court in and for said county, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to said exemplification is the proper seal of said court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand, at the city of Brooklyn this 8th day of June, in the year 1897.

[SEAL.] (Signed) WM. W. GOODRICH,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

(Signed) JACOB WORTH, *Clerk.*

STATE OF NEW YORK, *County of Kings,* } *ss.:*

I, Jacob Worth, clerk of the county of Kings and also clerk of the supreme court of said county in and for the second judicial department of said State (said court being a court of record), do hereby certify that Hon. William W. Goodrich, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the second judicial department, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 8th day of June, in the year 1897.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

62 *Bond in Favor of Fannie Tobin McCan.*

The People of the State of New York, by the grace of God free and independent, to all to whom these presents may come, Greeting:

Know ye that we have inspected the files and records in the office of the clerk of the county of Kings, at the city of Brooklyn, [SEAL.] in said county; do find a certain undertaking remaining there on file of records in the words and figures following, to wit:

Know all men by these presents that we, Mary Tobin Stempel, of

Mt. Vernon, N. Y., general guardian of the estate of Fannie Tobin McCan, a minor, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto the said Fannie Tobin McCan, the minor aforesaid, in the sum of two hundred thousand dollars ($200,000), lawful money of the United States of America, to be paid to the said Fannie Tobin McCan, her heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

63 Sealed with our seals and dated the 28th day of February, 1896.

Whereas the above-named Fannie Tobin McCan is entitled to a certain distributive share of the estate of Hester Calloway McCan; and

Whereas the said Fannie Tobin McCan is a minor and the said Mary Tobin Stempel has been duly appointed by the supreme court of the State of New York, county of Kings, general guardian of the estate of the said minor;

Whereas by an order of said supreme court made the 28th day of February, 1896, the distributive share of the estate of Hester Calloway McCan and the income of the real estate belonging to the said minor, Fannie Tobin McCan, and payable to the said minor, was directed to be paid to the above-named Mary Tobin Stempel, general guardian of the said minor, upon her tendering to the said court the bond in the said order required, conditioned as therein set forth:

Now, therefore, the condition of this obligation is such that if the above-bounden Mary Tobin Stempel shall and will faithfully apply said distributive share and render a just and true account of the application thereof in all respects to any court having cognizance thereof when thereunto required, then this obligation to be void; otherwise to remain in full force and virtue.

MARY TOBIN STEMPEL. [L. S.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By DAVID B. SICKELS,
2nd Vice-President.
SAMUEL S. PERRY, *Attorney.*

Signed, sealed, and delivered in the presence of—
L. E. CARMAN.

64 STATE OF NEW YORK, } ss:
County of New York, }

On this 28th day of February, 1896, before me personally appeared Mary Tobin Stempel, general guardian of the person and estate of Fannie Tobin McCan, a minor, to me known and known to me to be the individual described in and who executed the foregoing in-

strument, and she duly acknowledged to me that she executed the same.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Richmond Co.'s.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 28th day of February, 1896, before me personally appeared David B. Sickels, 2nd vice-president of the American Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the 2nd vice-president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of trustees of said company, and that he signed said instrument as 2nd vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said David B. Sickels further said that he was acquainted with Samuel S. Perry and knew him to be one of the attorneys of said company; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry and was thereto subscribed by the like order of the said board of trustees and in the pres-
65 ence of him, the said David B. Sickels, 2nd vice-president.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Rockland Co.'s.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and they hereby are and each of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for — on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

CITY AND COUNTY OF NEW YORK, *ss:*

—, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolutions with the orig-

inal thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 28th day of February, 1896.

SAMUEL S. PERRY, *Attorney.*

O K. R.

Endorsed: Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Filed & rec. Feb'y 28, 1896.

66 All which we have caused by these presents to be exemplified and the seal of our said court for said county to be hereunto fixed.

Witness Hon. William W. Goodrich, presiding justice of our supreme court in and for the second judicial department of said State, this 8th day of June, 1897, and in the 121st year of the Independence of the United States.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

I, William W. Goodrich, presiding justice of the supreme court of the State of New York in and for the second judicial department thereof, do hereby certify that Jacob Worth, whose name is subscribed to the preceding exemplification, is the clerk of the county of Kings and clerk of the supreme court in and for said county, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to said exemplification is the proper seal of said court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand, at the city of Brooklyn, this 8th day of June, in the year 1897.

[SEAL.] (Signed) WM. W. GOODRICH,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

(Signed) JACOB WORTH, *Clerk.*

STATE OF NEW YORK, } ss.:
County of Kings, }

I, Jacob Worth, clerk of the county of Kings, and also clerk of the supreme court of said county in and for the second judicial department of said State (said court being a court of record), do hereby certify that Hon. William W. Goodrich, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the second judicial department, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 8th day of June, in the year 1897.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

67 *Bond in Favor of Charles Patterson McCan.*

The People of the State of New York, by the grace of God free and independent, to all to whom these presents may come, Greeting:

Know ye that we have inspected the files and records in the office of the clerk of the county of Kings, at the city of [SEAL.] Brooklyn, in said county; do find a certain undertaking remaining there on file of record in the words and figures following, to wit:

Know all men by these presents that we, Mary Tobin Stempel, of Mt. Vernon, N. Y., general guardian of the estate of Charles Patterson McCan, a minor, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto the said Charles Patterson McCan, the minor aforesaid, in the sum of two hundred thousand dollars ($200,000), lawful money of the United States of America, to be paid to the said Charles Patterson McCan, *her* heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of February, 1896.

Whereas the above-named Charles Patterson McCan is entitled to a certain distributive share of the estate of Hester Calloway McCan; and

Whereas the said Charles Patterson McCan is a minor, and the said Mary Tobin Stempel has been duly appointed by the supreme court of the State of New York, county of Kings, general guardian of the estate of the said minor;

68 Whereas by an order of said supreme court made the 28th day of February, 1896, the distributive share of the estate of Hester Calloway McCan and the income of the real estate belonging to the said minor, Charles Patterson McCan, and payable to the said minor was directed to be paid to the above-named Mary Tobin Stempel, general guardian of the said minor, upon her tendering to the said court the bond in the said order required, conditioned as therein set forth;

Now, therefore, the condition of this obligation is such that if the above-bounden Mary Tobin Stempel shall and will faithfully apply said distributive share and render a just and true account of the application thereof in all respects to any court having cognizance thereof when thereunto required, then this obligation to be void; otherwise to remain in full force and virtue.

MARY TOBIN STEMPEL. [L. S.]
AMERICAN SURETY COMPANY OF NEW YORK,
By DAVID B. SICKELS, 2*nd* — *President.*
SAMUEL S. PERRY, *Attorney.*

Signed, sealed, and delivered in the presence of—
L. E. CARMAN.

STATE OF NEW YORK, }
County of New York, } *ss:*

On this 28th day of February, 1896, before me personally appeared Mary Tobin Stempel, general guardian of the person and estate of Charles Patterson McCan, a minor, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

L. E. CARMAN,
69 *Notary Public No.* 19, *New York County.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Richmond Co.'s.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 28th day of February, 1896, before me personally appeared David B. Sickels, 2nd vice-president of the American Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the — vice-president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of trustees of said company, and that he signed said instrument as — vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said H. D. Lyman further said that he was acquainted with Samuel S. Perry, and knew him to be one of the attorneys of said company; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry, and was thereto subscribed by the like order of the said board of trustees and in the presence of him, the said H. D. Lyman, vice-president.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Rockland Co.'s.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice presidents be, and
70 they hereby are and each of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for — on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings required or permitted in all actions or pro-

ceedings by law allowed, such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

CITY AND COUNTY OF NEW YORK, *ss:*

—, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolutions with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 28th day of February, 1896.

SAMUEL S. PERRY, *Attorney.*

M.

Endorsed: Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Filed & rec. Feb'y 28, 1896.

All which we have caused by these presents to be exemplified and the seal of our said court for said county to be hereunto fixed.

Witness Hon. William W. Goodrich, presiding justice of our supreme court in and for the second judicial department of said State, this 8th day of June, 1897, and in the 121st year of the Independence of the United States.

71 [SEAL.] (Signed) JACOB WORTH, *Clerk.*

I, William W. Goodrich, presiding justice of the supreme court of the State of New York in and for the second judicial department thereof, do hereby certify that Jacob Worth, whose name is subscribed to the preceding exemplification, is the clerk of the county of Kings and clerk of the supreme court in and for said county, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to said exemplification is the proper seal of said court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand, at the city of Brooklyn, this 8th day of June, in the year 1897.

(Signed) WM. W. GOODRICH,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

STATE OF NEW YORK, *County of Kings,* } *ss:*

I, Jacob Worth, clerk of the county of Kings, and also clerk of the supreme court of said county in and for the second judicial department of said State (said court being a court of record), do hereby certify that Hon. William W. Goodrich, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the second judicial department, duly elected

and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 8th day of June, in the year 1897.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

72 *Bond in Favor of David Chambers McCan.*

The People of the State of New York, by the grace of God free and independent, to all to whom these presents may come, Greeting:

[SEAL.] Know ye that we have inspected the files and records in the office of the clerk of the county of Kings, at the city of Brooklyn, in said county; do find a certain undertaking remaining there on file of record in the words and figures following, to wit:

Know all men by these presents that we, Mary Tobin Stempel, of Mt. Vernon, N. Y., general guardian of the estate of David Chambers McCan, a minor, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto the said David Chambers McCan, the minor aforesaid, in the sum of two hundred thousand dollars ($200,000), lawful money of the United States of America, to be paid to the said David Chambers McCan, *her* heirs, executors, administrators, or assigns; for which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of February, 1896.

Whereas the above-named David Chambers McCan is entitled to a certain distributive share of the estate of Hester Calloway McCan; and

Whereas the said David Chambers McCan is a minor and the said Mary Tobin Stempel has been duly appointed by the supreme court of the State of New York, county of Kings, general guardian of the estate of the said minor;

73 Whereas by an order of said supreme court, made the 28 day of February, 1896, the distributive share of the estate of Hester Calloway McCan and the income of the real estate belonging to the said minor, David Chambers McCan, and payable to the said minor, was directed to be paid to the above-named Mary Tobin Stempel, general guardian of the said minor, upon her tendering to the said court the bond in the said order required, conditioned as therein set forth:

Now, therefore, the condition of this obligation is such that if the above-bounden Mary Tobin Stempel shall and will faithfully apply said distributive share and render a just and true account of the application thereof in all respects to any court having cognizance

thereof when thereunto required, then this obligation to be void; otherwise to remain in full force and virtue.

MARY TOBIN STEMPEL. [L. S.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By DAVID B. SICKELS, *2nd Vice-President.*
SAMUEL S. PERRY, *Attorney.*

Signed, sealed, and delivered in the presence of—
L. E. CARMAN.

STATE OF NEW YORK, }
County of New York, } *ss:*

On this 28th day of Febuary, 1896, before me personally appeared Mary Tobin Stempel, general guardian of the person and estate of David Chambers McCan, a minor, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

L. E. CARMAN,
74 *Notary Public No.* 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Richmond Co's.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 28th day of February, 1896, before me personally appeared David B. Sickels, 2nd vice-president of the American Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the 2nd vice-president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the board of trustees of said company, and that he signed said instrument as 2nd vice-president of said company by like authority, and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893; and the said David B. Sickels further said that he was acquainted with Samuel S. Perry and knew him to be one of the attorneys of said company; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry, and was thereto subscribed by the like order of the said board of trustees and in the presence of him, the said David B. Sickels, vice-president.

L. E. CARMAN,
Notary Public No. 19, *New York Co.*

Certs. filed in Kings, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, and Rockland Co's.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and
75 they hereby are and each of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for — on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

CITY AND COUNTY OF NEW YORK, *ss:*

—, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolutions with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 28th day of February, 1896.

SAMUEL S. PERRY, *Attorney.*

O K. R.

Endorsed: Approved Feb'y 28, 1896. N. H. Clement, J. S. C. Filed & rec. Feb'y 28, 1896.

All which we have caused by these presents to be exemplified and the seal of our said court for said county to be hereunto -fixed.

Witness Hon. William W. Goodrich, presiding justice of our supreme court in and for the second judicial department of said State, this 8th day of June, 1897, and in the 121st year of the Independence of the United States.

76 [SEAL.] (Signed) JACOB WORTH, *Clerk.*

I, William W. Goodrich, presiding justice of the supreme court of the State of New York in and for the second judicial department thereof, do hereby certify that Jacob Worth, whose name is subscribed to the preceding exemplification, is the clerk of the county of Kings and clerk of the supreme court in and for said county, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to said exemplification is the proper seal of said court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand, at the city of Brooklyn, this 8th day of June, in the year 1897.

(Signed) WM. W. GOODRICH,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

STATE OF NEW YORK, } ss:
County of Kings, }

I, Jacob Worth, clerk of the county of Kings and also clerk of the supreme court of said county in and for the second judicial department of said State (said court being a court of record), do hereby certify that Hon. William W. Goodrich, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the second judicial department, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 8th day of June, in the year 1897.

[SEAL.] (Signed) JACOB WORTH, *Clerk.*

77 Judgment of the civil district court for the parish of Orleans, succession of D. C. McCan, No. 39737, recognizing the minors McCan as the sole legal forced heirs of D. C. McCan and putting them in possession, through their guardian (Mrs. Stempel) of the property of said deceased. Filed Dec. 17, 1897.

STATE OF LOUISIANA:

[Cancelled law stamp.]

Civil District Court for the Parish of Orleans.

I hereby certify that on the 14 day of February, 1896, judgment was rendered in this court in the following-entitled suit in the words and figures following, to wit:

Succession of D. C. McCAN. No. 39737.

This cause came on this day to be heard on the petition of Mrs. Mary Stempel, guardian of her minor children, to annul the will of the deceased and for other relief—present, E. Howard McCaleb, attorney for said petitioner; Ernest D. Kruttschnitt, Esq., attorney for H. H. Hall, testamentary executor—where, after hearing pleadings, evidence, and argument of counsel, and for the reasons orally assigned, and the law and the evidence being in favor of petitioner and justifying the relief hereinafter granted—

It is ordered, adjudged, and decreed that the minors Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan be, and they are hereby, recognized as the sole legal and forced heirs of D. C. McCan, and as such, through their guardian, Mary Tobin Stempel, be, and they are hereby, put
78 in possession of the property of said D. C. McCan, deceased; that the provision of the will of said deceased giving the possession, control, and administration of said property to Harry H. Hall and Hester Calloway McCan be, and the same is hereby de-

creed to be, null and of no effect; that all questions not covered by this decree be reserved, and that the succession pay all costs.

Judgment rendered February 14th, 1896.

Judgment signed February 24th, 1896.

(Signed) T. C. W. ELLIS, *Judge.*

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this 26th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

(Signed) F. E. PETERSON,
Deputy Clerk.

(Endorsed:) Recorded in conveyance office book, parish of Orleans, in Book 161, fo. 310, on March 12, 1896.

Tax receipt for the year 1896 of the city of New Orleans from the estate of D. C. McCan on personal property, marked "D 1." Offered by defendant and filed Dec. 17, 1897.

No. 385.—City of New Orleans—Tax of 1896—On personal property.

Received —— —, 189–, of est. D. C. McCan sixteen thousand three hundred $\frac{00}{100}$ dollars for tax as described below:

Assessment.		For what purpose.		Amount.
Horses, cows, etc.				
Vehicles		City alimony	10 mills.	
Merchandise or stock in trade				
Money at interest, credits, bills receivable	800,000			
Money in possession	15,000			
Shares of stock				
Furniture, etc.		Interest and redemption, city bonds, under sec. 7, of act 110 of 1890	10 "	
Statuary, paintings, etc.				
Diamonds, jewelry, etc.				
Stock or interest in water craft				
Trackage, etc., of railroads				
Machinery and all motive power				
Judgments, suits, and causes in action				
Franchises, patents, copyrights, trade-marks, privileges, and charters, all canals and other ways of communication				
Bonds of all kinds				
Total taxable personal property	815,000	Total rate of tax	20 mills.	$16,300

(Signed) J. VOLLRATH, *For Comptroller.*

—— ——, *For Treasurer.*

As-essm't district.	No. of square.	Where situated.	Amount.
3	19	747 Fulton St. (office)	

[Written across the face of the preceding table:]

(Stamped across face in red ink as follows:)

COMPTROLLER'S OFFICE, CITY OF NEW ORLEANS,
NEW ORLEANS, *Jan'y 16th*, 1897.

I hereby certify that the above and foregoing is a true and correct extract from the assessment-rolls now of record and on file in this office, from which the original tax bill was taken and made out.

(Signed) JNO. F. BUTTS,
Comptroller ad Int.

TREASURER'S OFFICE, CITY OF NEW ORLEANS,
NEW ORLEANS, *Jan'y 17th*, 1897.

I hereby certify that the above and foregoing is a true and correct copy of the original tax bill in the name of est. D. C. McCan now of record and on file in this office.

(Signed) GEO. B. PENROSE, *Treasurer.*

Sworn to and subscribed before me this sixteenth day of January, 1897.

(Signed) BERNARD C. SHIELDS.
Not. Pub. [SEAL.]

80 *Decree. Entered and Filed December* 23, 1897.

United States Circuit Court, Eastern District of Louisiana, 5th Circuit. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

Decree.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows:

First. That the City of New Orleans, its officers, agents, attorneys, and representatives, and George B. Penrose, treasurer of said city, be perpetually enjoined, forbidding and prohibiting them and each of them from in any way or by any proceeding whatever enforcing the collection of the city taxes resulting from the illegal assessment upon the assessment-rolls of the first municipal and 2nd representative district in the name of D. C. McCan for money loaned, advanced, etc., $800,000, and cash on hand, bills receivable, etc., $15,000, and from seizing, advertising, and selling or attempting to sell all or any of the property whatever belonging to the infant wards Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Charles Patterson McCan and in the possession and under the control of the complainant, Mrs. Mary G. T. Stempel,

as guardian and trustee thereof, to pay and satisfy any claim or demand for said taxes assessed for the year 1896 in the name of the estate of D. C. McCan.

Second. That the assessment against the estate of D. C. McCan on the rolls of the assessment district, square 19, for moneys loaned, advanced, etc., $800,000, and cash on hand, bills receivable,
81 etc., $15,000, and that said assessment and the record thereof be, and the same is hereby, declared illegal, null, and void.

Third. That the assessment and municipal tax levied thereon, as aforesaid, be, and the same is hereby, declared illegal and violative of the constitution and laws of the State of Louisiana and the Constitution of the United States.

Fourth. And it is further ordered, adjudged, and decreed that the complainant do recover from the defendants the costs of this proceeding.

Dec. 23d, 1897.

(Signed) DON A. PARDEE,
Circuit Judge.

82 *Assignment of Errors. Filed March* 28, 1898.

United States Circuit Court, Eastern District of La., 5th Circuit. In Equity.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

Now into this honorable court come The City of New Orleans and The Board of Assessors for the Parish of Orleans and George B. Penrose, treasurer of the city of New Orleans, defendants in the above entitled and numbered cause, and assign the following errors in the decree of the court of date December 23rd, 1897:

I.

The court erred in holding that the assessment made for the year 1896 in the name of the estate of D. C. McCann was an illegal assessment for the reason that said property was legally assessed under section 7 of act 106 of 1890, Statutes of Louisiana, inasmuch as the evidence shows that the property assessed consisted of negotiable notes, mortgages, bonds, etc., all of which were at the time the assessment was made and at the time the cause was tried in the possession of an agent, residing in the city of New Orleans, to be by him collected and reinvested for account of the heirs of said estate.

II.

The court erred in decreeing that the assessment against the estate of D. C. McCann, on the rolls of the third assessment district, square 19, for moneys loaned, advanced, etc., $800,00-.00, and cash on hand, bills receivable, etc., $15,000.00, was illegal, null, and void, and the court erred in declaring that the record thereof was illegal,

null, and void, for the reason that the evidence offered by
83 complainants shows that on June 4th, 1896, the said complainants paid a tax on twenty-five hundred dollars of personal property assessed in the name of the estate of D. C. McCann for taxes due the city of New Orleans for the year 1896, and said payment was a recognition of the correctness of the assessment in the name of said estate, and estopped complainants from complaining thereof.

III.

The court erred in granting and perpetuating any injunction prohibiting the City of New Orleans, its officers, etc., and George B. Penrose, its treasurer, from in any way or by any proceedings whatever enforcing the collection of city taxes resulting from said assessment, for the reason that the same is a valid assessment, and the City of New Orleans, its officers, etc., and George B. Penrose, its treasurer, had a right and it was their duty to enforce the collection of same by all legal methods.

IV.

The court erred in holding that the assessment and municipal tax levied thereon were illegal and violative of the constitution and laws of the State of Louisiana and the Constitution of the United States.

V.

That, considering the evidence and law applicable thereto, the court erred in not refusing any injunction and in not dismissing the bills of complainant herein.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Att'y, Solicitor for City of New Orleans and Geo. B. Penrose, Treasurer.

(Signed) F. C. ZACHARIE,
Solicitor for B'rd of Assessors, Par. of Orleans.

84 United States Circuit Court, Eastern District of Louisiana.

MRS. MARY G. T. STEMPEL, Guardian,
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12598.

To the honorable the United States circuit court for the eastern district of Louisiana:

The petition of The City of New Orleans and The Board of Assessors for the Parish of Orleans and George B. Penrose, treasurer of the city of New Orleans, defendants herein, respectfully represents:

That the said defendants, petitioners, are aggrieved by the decree of this honorable court herein rendered and signed on the 23rd day of December, 1897; that there is error to the prejudice of said defendants in the said decree, by which they will be irreparably injured.

Wherefore petitioners pray that they be allowed an appeal from

said decree, returnable to the Supreme Court of the United States, according to law, upon giving bond in an amount to be fixed by the court, and that Mary G. T. Stempel (wife of Edward Stempel), guardian of the infants Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan, and Chas. Patterson McCan, and her said husband, Edward Stempel, to join, authorize, and assist her, be cited to answer said appeal; and petitioners pray for general relief.

(Signed) F. C. ZACHARIE,
Solicitor for Board of Assessors, Par. of Orleans.
(Signed) JAMES J. McLOUGHLIN,
Assistant City Attorney, Solicitor for City of New Orleans and for George B. Penrose, Treasurer.

85 *Order.*

Let an appeal be granted petitioners as prayed for, returnable to the Supreme Court of the United States, at the city of Washington, within thirty days, upon the petitioners giving bond, with good and sufficient security, in the sum of three hundred dollars, conditioned as the law directs.

(Signed) DON A. PARDEE,
Circuit Judge.

March 28th, 1898.

Bond. Filed March 31, 1898.

UNITED STATES OF AMERICA:

Know all men by these presents that we, the City of New Orleans, the Board of Assessors for the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, and C. Harrison Parker, are held and firmly bound, jointly and severally, unto Mary G. T Stempel (wife of Edward Stempel), guardian of the infants Fannie Tobin McCann, David Chambers McCan, Kate Elizabeth McCan, and Chas. Patterson McCan, and her husband, Edward Stempel, in the sum of three hundred dollars, lawful money of the United States of America, to be paid to said Mrs. Mary G. T. Stempel, guardian, and her husband, Edward Stempel, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 29th day of March, 1898.

Whereas the said City of New Orleans, Board of Assessors of the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, having heretofore, to wit, on the 28th day of March, 1898, taken an appeal to the Supreme Court of the United
86 States from and to reverse the decree rendered on the 23rd day of December, 1897, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Mrs. Mary G. T. Stempel, guardian, *vs.* City of New Orleans *et als.*, #12598 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden City of New Orleans, Board of Assessors for the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, shall prosecute their said appeal to effect and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) GEO. B. PENROSE,
Treasurer of the City of New Orleans.

(Signed) W. C. FLOWER,
Mayor City of New Orleans.

(Signed) E. K. SKINNER,
Pres. Board of Assessors.

(Signed) C. HARRISON PARKER.

Bond approved.

(Signed) CHARLES PARLANGE,
U. S. Judge.

UNITED STATES OF AMERICA, *Eastern District of Louisiana,* } *ss:*

Personally appeared C. H. Parker, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of one thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) C. HARRISON PARKER.

Subscribed and sworn to before me this 31st day of March, 1898.

[SEAL.] (Signed) FRANK H. MORTIMER,
United States Commissioner, Eastern District of Louisiana.

(Endorsed:) No. 12598. U. S. circuit court, eastern dist. of La. Mrs. M. G. T. Stempel *vs.* City of N. O. Bond.

87 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Mary G. T. Stempel (wife of Edward Stempel), guardian of the infants Fannie Tobin McCann, David Chambers McCan, Kate Elizabeth McCan, and Chas. Patterson McCan, and her husband, Edward Stempel, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to an order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein you are appellees and The City of New Orleans, Board of Assessors for the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, are appellants, to show cause, if any there be, why the judgment rendered against the said City of New Orleans,

Board of Assessors for Parish of Orleans, and Geo. B. Penrose, treasurer of the city of New Orleans, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 7 day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

CHARLES PARLANGE, *Judge.*

88 [Endorsed:] E. Return. United States circuit court, eastern district of Louisiana. No. 12598. Mrs. Mary G. T. Stempel, guardian, *vs.* City of New Orleans *et als.* Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed April 9, 1898. E. R. Hunt, clerk.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Ap'l 7, '98. On this day personally came and appeared before the undersigned authority Acee Le Blanc, deputy United States marshal for the eastern district of Louisiana, known to me as such, who, being duly sworn, deposes and says that on the 7th day of April, 1898, he served this writ on Mrs. Mary G. T. Stemple (wife of Edward Stemple), guardian of the infants Fannie Tobin McCann, Darias Chambers McCann, Kate Elizabeth McCann, and Charles Patterson McCann, and her husband, Edward Stemple, by handing the same to her attorney of record, Judge E. Howard McCaleb, in person, in the city of New Orleans, La.

ALCEÉ LE BLANC.

Sworn to and subscribed before me on this 9th day of April, 1898.

E. R. HUNT, *Clerk.*

89 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 88 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Mary G. T. Stempel, guardian, etc., *vs.* City of New Orleans *et als.*, No. 12598 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 16 day of April, A. D. 1898.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 16 day of April, A. D. 1898.

CHARLES PARLANGE, *Judge.*

Endorsed on cover: Case No. 16,859. E. Louisiana C. C. U. S. Term No., 286. The City of New Orleans, The Board of Assessors for the Parish of Orleans, and George B. Penrose, treasurer of the city of New Orleans, appellants, *vs.* Mary G. T. Stempel (wife of Edward Stempel), guardian of the infants Fannie Tobin McCann *et al.* Filed April 26, 1898.

United States Supreme Court

October Term.

No. 286.

THE CITY OF NEW ORLEANS, BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, AND GEORGE B. PENROSE, TREASURER OF THE CITY OF NEW ORLEANS, APPELLANTS.

vs.

MARY G. T. STEMPEL (WIFE OF EDWARD STEMPEL), GUARDIAN OF THE INFANTS FANNIE TOBIN McCANN, ET AL.

Pleadings.

Mrs. Mary G. T. Stempel, claiming to be guardian of the minors McCan, filed a bill of equity in the United States Civil Court, Eastern District of Louisiana, asking an injunction against the City Treasurer of New Orleans, to restrain him from enforcing the collection of taxes on the assessments in the name of estate of D. C. McCan, for the year 1896, on money in possession, $15,000—and money loaned, bills receivable, etc., $800,000, and asks judgment against the Board of Assessors to cancel the assessments.

She says that these children, by judgment of the Civil District Court, were recognized as the sole heirs of the father

and mother, Mr. and Mrs. D. C. McCan, and as such placed in possession of their property. She avers that after these judgments were rendered, and while the assessment rolls for 1896 were exposed, there appeared on said rolls in the name of the estate of D. C. McCan an $800,000 and an $15,000 assessment, that she applied to the Board of Assessors for its cancellation for the reasons:

1st. That the children aforesaid had been set in possession of the property so inherited by them from the estate of D. C. McCan, aud to whom the same now belongs, and by which said estate terminated and had ceased to exist.

2nd. That she and her wards were all residents and citizens of the State of New York; that under the Constitution of the United States, etc., the power of taxation is limited to persons, etc., within the jurisdiction of the State, and that debts have their situs with the creditor.

She alleges that the Board of Assessors refused to comply with her request, and that in turn she applied to the City Council, which also refused.

She claims that the City Treasurer is trying to enforce the collection of taxes based on erroneous assessments, and she says that the greater part of this assessment is based upon City and State bonds which are not taxable, and any tax upon them would impair the obligation of the contract, which, when issued, were declared not taxable.

She claims she has paid all taxes on real estate owned by her wards, and also on personal property for the year 1896.

The answers of the defendants and appellants here was briefly stated, a general denial, except in so far as the facts alleged in complainants' bill. On these pleadings the case went to trial in the Court *a qua*, and judgment was rendered,

the opinion being delivered orally, perpetuating the injunction and cancelling the assessments. From that judgment this appeal has been taken by the respondents and defendants.

EVIDENCE.

The evidence shows that Mrs. Stempel is the guardian of these children; that the successions of Mr. and Mrs. McCan were opened and closed in the Civil District Court, and on March 14th, 1896, a judgment was recorded in the Conveyance Office recognizing these children as heirs and placing them in possession as such. It also shows that they paid their taxes on $2500—personal property, in the name of the estate of D. C. McCan; it shows that they made application to the Board of Assessors, as is mentioned in their bill of complaint, and that these applications were refused.

The testimony of Albert Baldwin shows that he is the resident agent of Mrs. Stemple and her children in New Orleans, and as such handles or controls all her business in New Orleans. He says that the bills receivable that were turned over by the estate of McCan to Mrs. Stemple were largely mortgage notes, and he roughly estimated the value of the personal property at $500,000, about $230,000 of which was composed of bonds of the City of New Orleans and State of Louisiana, and that all of the mortgage notes, bonds, etc., are kept in the City of New Orleans at all times, and never sent elsewhere. That 80 per cent. of the mortgage notes held in New Orleans for account of Mrs. Stemple and her children are on property situated in New Orleans, and that all the notes were in New Orleans at the time the assessment was made, to-wit: January to March, 1896.

Consequently, it is a fact, established by Mr. Baldwin's testimony, that the notes and money on which the assessment is made were actually in New Orleans when the assessment was made upon it and always have been.

There is no claim in the bill, or elsewhere, on the part of Mrs. Stemple, for any *reduction* of the assessment. She simply asks that it be cancelled entirely, not alone to an extent sufficient to cover the State and City bonds, which she says are not taxable, but she also asks for a cancellation of the assessment on *all* the money on hand, mortgage notes, loans, and on every kind of personal property in New Orleans belonging to her and her children and controlled by her agent, Mr. Albert Baldwin. The bill admits the payment of the taxes on real estate and on money on deposit, etc., under the assessment in the name of "Estate of D. C. McCan."

The judgment of the lower Court, and the opinion, the latter of which was delivered orally, was based entirely upon the principle, decided by the Court therein, that property such as notes, bonds, etc., although within the jurisdiction of a State, in the hands of an agent for collection and reinvestment could not be taxed by a State through positive enactment. Our opponent now urges here that the assessment is null and void because the assessment was made in the name of the "Estate of D. C. McCan" and not in the name of the heirs who had been put in possession, and because notice had been given to the assessors and Reviewing Board of that fact, and application had been made to correct the assessment accordingly, which had been refused in both instances, and that notice and application had been made within the time and in the manner provided by law. This ground was not urged and argued in the lower Court, nor did the lower Court even allude to it in its

opinion. Had it been urged and argued, and had the lower Court sustained the point, the assessment could and would have been changed so as to stand in the names of the heirs. It cannot prevail here even if it had been alleged in the proceedings, because no such ground is alleged in complainants' bill. In numbers 5 and 6 of of their bill (Trans. pp. 2 and 3) the change of title is mentioned, but no application for correction or change of assessment is sought to be made on the ground of misnomer. But on the contrary it is alleged that the application was made that the assessment "be erased and cancelled and stricken from the rolls" because the property assessed belonged to non-residents, and as such was not assessable or taxable in Louisiana.

And again, because it is shown by the evidence that such was not the purpose and intent of the applications to the Board of Assessors and the Board of Review, the first of which was filed on March 17th, 1896, and the second on April 9th, 1896, and thereafter the taxes on both the real estate, and a portion of the personal property were paid under the assessment in the name of the "Estate of D. C. McCan." Baldwin the agent so testified on p. 23 of the Transcript.

"Q. Have the taxes on the real estate for 1896 all been paid? A. Yes, sir; and also the taxes on the personal property, household furniture."

This demonstrates clearly not only that the intention and demand in the applications was not for a *correction* or *change* of the name in which the assessment was made, but for an entire cancellation, and it also shows that there was an acquiescence or ratification of the assessment as it stood in the name of "Estate of D. C. McCan." In 33 L. A. 818, property was assessed in the name of "Estate of Mrs. R. Jennings" when it should

have been assessed in the name of Mrs. N. R. Jennings or in the name of her heirs. The heirs brought suit to annul certain tax judgments rendered on the defective assessment. On the trial it appeared that an attorney had made application to the Board of Assessors to reduce the assessment, the Court said: "We have felt great doubt as to whether those in the name of 'Estate of Mrs. R. Jennings' should not be saved from nullity by the proceedings taken by the present attorney of the plaintiffs in connection with the assessments. While the rolls were open he filed sworn applications for the reduction, signed 'Estate Mrs. R. Jennings per B. R. Foreman.' If it were clearly proved that, in making these applications he acted by direct authority of the owners, we should regard them as operating a clear ratification of the assessment in that name, which would have estopped them from opposing the assessment or any of the subsequent proceedings thereon." How much stronger does this doctrine appear to apply to the case at bar, when we consider that there was *actual payment by a duly authorized agent*. In 38 L. A. 807, the Court held that an assessment in the name of Geo. F. Sanderson was valid, although Sanderson had been then dead four years, and assigned as one of the reasons for so declaring that it had been assessed to Sanderson "who had paid the taxes thereon for years past." Thus the assessment was maintained, not because, as in the case at bar, the taxes had been paid for the particular year under a wrong name but because they had been paid under similar assessments for prior years. In Reed vs. Creditors, 39 A. 125, in which a syndic attacked the assessments on the insolvent's property for six years back, and on the ground of erroneous assessments, the Court held that having placed the taxes for those years on the bilan or tableau in the insolvent proceedings, and by a proceed-

ing to refer the payment of them to the proceeds of sale "he is completely estopped from urging such an objection" to the assessments, and upheld the assessments. In 42 L. A. 435, the same doctrine was maintained. So in 42 A. 1127 the Court said: "Moreover the act of payment indicates a recognition and adoption of the mode of assessment, which is held to bar subsequent question thereof, Carter vs. City, 33 A. 816; Lane vs. March, Id. 554; Ins. Co. vs. Levi, 42 A. 432." The point involved in 42 A. 1147, was the the same as in the case at bar, that is "that the assessments are null for the years from 1875 to 1888, because made in the names of Fishel & Holmes who were not the owners." We take this to be universal law that abandonment of opposition, acquiescence, and ratification, by payment, of an erroneous assessment is an estoppel against further attack against that assessment. But our opponent argues on p. 4 of his brief that some of the owners here being minors, cannot be estopped by the acquiescence and ratification of their agent. He says "Moreover, the complainants are minors and 'minors cannot be estopped.' Zunts vs. Courcelle, 16 A. 98." The principle in the case cited has no application whatever to the case at bar. In that case two heirs sold their interest in property, which they derived from their parents, and also other rights which they derived from other parties, On the 28th of March, 1846, a Mrs. Segur another of the joint owners sold her portion. This act of sale was never recorded nor did it appear that the note to be given to Mrs. Moussier was ever so delivered. Subsequently Mrs. Segur donated to the minor children of the Moussiers, a certain interest in the property. That act of donation was duly recorded. The Court says: "It is contended by plaintiff that the owners have by their acts and silence been instrumental in deceiving him as

to the non-existence of any title in them. An answer to this that *minors cannot be* so *estopped*." The italics are our own and that our opponent has, inadvertently, quoted the Court as saying that "minors can never be estopped," whereas the Court only says that "minors cannot be *so* estopped," that is under the peculiar circumstances of that case. We can find no rule of law or authority that sanctions any doctrine, even intimating that estoppal will not lie against minors for acts done by the agent of a guardian or tutor, within the strict sphere and scope of his agency, and especially in relation to the question and management of the minors' property in its relation to a sovereign government. Nor do we think any such rule or principle exists, as it would be an extraordinary perversion of all principles, which govern in the law of taxation.

We respectfully submit that there is no force in the I and IV points argued in our opponent's brief and pass on to the real and only question at issue in this case.

The plaintiffs and appellees herein base their action on the doctrine of

MOBILIA SEQUUNTUR PERSONAM,

contending that the personal property, the assessment whereof they contest, belonging to persons residing outside of the State of Louisiana is not liable to taxation, in Louisiana altho' the notes etc., have been made in the State, the mortgages are on property within the State, etc., and actually within the State, in fact have never been outside of the State, since their execution. They do not appear to contest the proposition that the property is fully covered by the tax laws of the State, but contend that being the property of non residents, the State of Louisiana cannot by positive law tax it.

The complainants really base their whole case on the doctrine of

as applicable to them as non-residents, and claim that the Louisiana Statutes are unconstitutional.

The doctrine advanced by our opponents in general terms embraces the principle that the domicile of movable or personal property follows that of the owner, and the laws in force at the domicile of the owner govern the disposition, control and relations of the movable property. The orgin of the doctrine has been traced to the civil law, and its application made according to that law. Judge Story in his Conflict of Laws, 8th Edit., Chap. IX, and Wharton in his Conflict of Laws, 2nd Edit., p. 414, Sec. 334, learnedly discuss its origin and its proper application. Wharton says in Sec. 343: "If we view that law as now applied, we must admit that the tendency of present authority, as has already been shown, is to deny the proposition *in toto;* and to hold on the contrary that all property, movable and immovable, is to be judged of and determined by the *lex rei sitae.*" Story does not go so far as Wharton, but says (note a page 543): "*Mobilia sequuntur personam.* The exceptions to the maxim *mobilia sequuntur personam* have become so numerous that it cannot be safely invoked for the decision of any but the simplest cases at the present day, if ever, indeed, a case can ever be decided upon a maxim." Both these authors agree that the principle will only govern when its invocation does not conflict with the positive law of the State where the movables are actually situated. In other words, that it is a fiction of law, which prevails by comity, and it must yield to positive law.

That the property assessed is covered by the Tax Statutes of the State is indisputable. Section 1 of Act No. 85 of 1888, taxes "all personal property held in trust, or by a wife or minor

child; all property held, controlled or administered in each separate capacity as president, cashier, treasurer, liquidator, assignee, master, superintendent, manager, sequestrator, receiver, trustee, stakeholder, depositary, warehouseman, keeper, curator, tutor, administrator, legatee, heir, beneficiary, father, agent, attorney, usufructuary, mandatory, fiduciary, or official capacity * * * all rights, credits, bonds, stocks, and securities of all kinds, *promissory notes*, open accounts and other obligations; "*all cash on hand*," etc. The italics are our own. The Act 106 of 1890, amending the Act of 1888, provides in Section 1, *ipsissimis verbis* identically the same, and in Section 7, after providing for the assessment of "stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits," further provides that "all this shall apply with equal force to any person, or persons representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself *or through any agent* shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and *all bills receivable, obligations, or credits* arising from business done in this State are hereby declared assessable within this State, and at the business domicile of said non-resident, his agent or representative." The italics are our own. That the Statute covers promissory notes belonging to non-residents, in the hands of an agent resident within the State has never been pointedly adjudicated upon by the Courts of Louisiana, but the Court has intimated several times that promissory notes are constitutionally taxable under it.

LOUISIANA JURISPRUDENCE

It is a singular coincidence that the principle laid down by Story and Wharton, and now generally accepted, was first in

America, applied by the Supreme Court of Louisiana, and was then followed by courts of other States and by the Federal Courts. Both Story and Wharton discuss and approve the Louisiana case, as the leading case. In 4 M. 20, a sale made, at the domicile of the owner in New York, of movables situated in Louisiana, but without delivery, was held not to protect the property from seizure in Louisiana, before delivery, although under the law of New York the sale was complete without delivery. The decision is short and does not include any general reasoning. The doctrine, however, was reaffirmed in 5 M. 23 and 7 M. 24. In these cases the opinions are brief also, and it is only in 2 M. N. S. which reaffirms the prior decisions that the Court enters more fully into the question and declares (p. 99) "nor can the foreigner or stranger complain of this if he sends his property within a jurisdiction different from that where he resides, he impliedly submits it to the rules and regulations in force in the country where he places it. *What the law protects it has a right to regulate.*" The italics are the Court's.

The doctrine is repeated in 17 L. 590. In 8 R. 414, the Court said: "We consider the doctrine as well settled now that personal property has no locality, and that the laws of the owner's domicile should in all cases determine the validity of the transfer or alienation, *unless there is some positive or customary law of the country to the contrary*. Story's Conflict of Laws, §383 *et seq.*" See also 24 A. 93, 579; 31 A. 509." The Louisiana cases cited by us refer to the abolition of the application of the maxim by positive law in cases strictly between citizens of our own and other States.

We have, therefore, thus far only examined and discussed the question as to how far the general principle of *mobilia*

sequuntur personam is abolished and done away with in cases where private rights are affected as between citizens of one State and those of another. We think that we have shown conclusively that in this branch of private International law the comity by which the principle is respected will not be allowed to prevail where there is positive law conflicting with the maxim and the application of the maxim would injure or act detrimentally to the interests of the citizens of the State wherein the doctrine was invoked. We now pass on to the larger question under public international law, where the principle would effect the rights and privileges of the State itself, as in cases of

POSITIVE LAWS OF TAXATION,

doing away with the comity on the question.

The jurisprudence of Louisiana will show that the same principle prevails in the public law as in the private law. The legacy tax against foreign heirs and legatees levied by an old law of the State as well as by recent statutes, irrespective of the fact whether deceased was domiciled in the State or not, has been uniformly sustained by our courts, notwithstanding the fact that the legacy consisted of movables, and that immediately on the death of the deceased the ownership vested in the heir upon the principle of *le mort saisit le vif*. 2 A. 667; 9 A. 186; 10 A. 391; 12 A. 577; 13 A. 113.

Our opponents dwelt with some force in the Court below on the Meyer case, 41 A. 646, in which the Court decided that a judgment could only be taxed at the domicile of the owner, for there alone was it located. We do not dispute the correctness of that decision, *under the then existing law, Act 98 of 1886*, for there was nothing in that Act doing away with the principle of *mobilia sequuntur personam*. The Court in that

case especially calls attention to that fact, and says: "Whether it would lie within the the power of the Legislature to direct specifically that judgments belonging to resident creditors should be assessed and taxed in the parish where they are rendered is a question not before us. The statute simply directs that movables shall be assessed where they are located, *and in absence of legislative provision to the contrary, judgments like debts, have their situs at the domicil of the creditor.*" The italics are our own. Thus the decision turns on the then existing law, which in no wise conflicted with the doctrine *mobilia sequuntur personam.* The decision in Paving Company vs. City et als., 41 A. 1017, "is predicated mainly on the revenue act of 1888."

The sections 6, of the Acts of 1885 and 1888, are identical in language, and there can be no question that there were in those sections no provision affecting the doctrine of *mobilia sequuntur personam* and making movable property of non-residents taxable in the State. Both of them were rendered in 1889, the last in December. It was in order to remedy the defect in the then existing law that the amendment to the Statute of 1888 was passed in Act 106 of 1890. Section 7 of this last corresponds literally with section 6 of the former acts, but adds thereto the additional *proviso:* * * * * "And this shall apply with equal force to any person or persons representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident' either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State and at the business domicile of said non-resident, his agent or representative."

The first case adjudicated involving the new proviso contained in the Act of 1890 is the one in 44 A. 764, in which the question decided was as to the right of the State to tax premiums received, and credits therefor, received by a foreign insurance company. The Court decided that premiums and credits could not be assessed. It was particular to guardedly say, however, "We are dealing exclusively with the question of credits as assessed." It sustained the legality of the tax on "money in possession." In the course of the opinion it says "the Statute must be applied so far as it relates to tangible property belonging to non-residents, and as to them the general rule recognized by the comity of States *mobilia sequuntnr personam* mnst yield." All that was thus decided was that premiums collected for transmission out of the State, and credits could not be taxed. The next case, 44 A. 770, affirmed the same doctrine that mere ordinary debts due to non-residents could not be taxed in Louisiana. The Court, however, here again guarded itself by saying "There is no doubt of the legislative power to modify the rule of comity, *mobilia personam sequnntur personam*, in many respects. Movables having an actual *situs* on the State may be taxed there. *Even debts may assume such concrete form in the evidence thereof that they may be similarly subjected when such evidences are situated in the State*, as in the case of bank notes, public securities, *and possibly of negotiable promissory notes*, bills of exchange on bonds." We italicize in order to call especial attention to the fact that the Court does not decide bonds, promissory notes, etc., due to non-residents, but actually in Louisiana to be non-taxable, but intimates strongly to the contrary that they may be taxable. In 46 A. 1, the Court decided that "moneys standing to the credit of a non-resident firm on the books of a New Orleans firm are not taxable." (Syllabus)

This was the case of a cotton buyer for a foreign firm, who purchased cotton for shipment to his principals in Manchester, Eng. He paid for the cotton by drawing bills of exchange, attaching thereto the bills of lading, sold the bills of exchange to the banks, and occasionully drew clear drafts. In 47 A. 1544, quoting from 15 Wallace 300, the Court further says: "This is the exact illustration that is given by Mr. Burroughs, for he says that when a person who resides in one State, has an agent in another State who loans or invests money for him on notes or other evidences of debt, and then reinvests the proceeds of the loans in the same State, such notes or *evidences of debt are taxable in the latter State.* Burroughs on Taxation, p. 60." The italics are our own.

In 49 A. 43, money belonging to a foreign corporation deposited in bank, and drawn out by an agent in the transaction of its business in New Orleans, was declared by the Court to be taxable. The Court said on p. 48: "We find a Statute of the State, which by its terms brings them under the operation of State and City taxation, and we are bound to give effect to its provisions unless they are in derogation of the Constitution. The unconstitutionality of the Act is not pleaded, and we, ourselves, see no unconstitutional features in it. The rule *mobilia sequuntur personam* is a fiction of the law, not resting upon any constitutional foundation, and which gives way before express laws, destroying it in any given case where constitutional requirements do not stand in the way." Just preceding this passage, which we have quoted, the Court says: "The company transacted business in New Orleans precisely as did resident business men and firms. It received all the advantages to be derived from the State and City government which residents received, and

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we see no reason why it should not be taxed, as claimed in this proceeding, unless there be 'insuperable legal objections in the way," thus harking back to the doctrine of Judge Porter in 2 N. S. "What the law protects, *it has a right to regulate.*"

So, in 49 A. 1173, the same principle was again maintained. In the recent case of the Liverpool, London and Globe Ins. Co. vs. Board of Assessors, the Court decided the same issue as in 44 A. 760, but the Court was particularly careful to say, "there is no doubt of the legislative power to modify the rule of *mobilia sequuntur personam* in many respects. We understand that the issue relates to the assessment of 'debts' that were due for premiums." They then quote from 44 A. 770, with approval and reaffirmance, "Even debts may assume such concrete form in the evidence thereof that they may be similarly subjected when such evidences are situated in the State, as in the case of bank notes, public securities, and possibly, of negotiable promissory notes, bills of exchange or bonds."

In that case the Court said: "We understand that the issue relates to the assessment of 'debts' that were due for premiums."

And it cites with approval the decision in 44 A. 767, and says further:

1. "There is no doubt of the legislative power to modify the rule of comity *mobilia sequuntur personam* in many respects."

We submit, therefore, that in so far as the jurisprudence of Louisiana has gone, it never has established the principle that promissory notes actually secured by mortgage on property in Louisiana, executed in the same, and held by an agent therein

for collection and reinvestment for a non-resident owner, are not liable to taxation in Louisiana. But on the contrary, that the Courts have, whenever they have touched upon the subject, distinctly intimated that, under positive laws to that effect, they were so taxable in the hands of the agent where the notes were situated.

THE JURISPRUDENCE OF OTHER STATES.

The proviso of the Louisiana Act of 1890 only puts in force a principle which has long been established in the other States of the Union, and maintained as constitutional. In Alvanly vs. Power, 2 Jones Equity (N. C.) 51, a similar law of North Carolina was sustained. In Catlin vs. Hull, 21 Vt. 161, the same rule was upheld, the Court saying: "Such has been the settled practice in this State, not only in reference to property which is tangible, *but also that which is incorporeal*, such as shares in manufacturing and banking corporations. Such also seems to be the practice in the State of New Hampshire. Smith vs. Buckley, 8 N. H. 428, and we have no doubt such is the general practice in many of the States." The Court then shows the justice and equity of the tax, saying as to non-residents: "Their property should yield its due proportion towards the support of the government which thus protects it." The same doctrine is upheld in 47 Mo. 600; 29 Cal. 533; 40 Mo. 580; 14 Kansas 602. In the Kansas case the Court said in regard to the doctrine of *mobilia sequuntur personam:* "The weight of judicial authority seems to be that for the purposes of taxation the maxim does not fully apply, even *where the property is intangible.*" The same was held in 40 Ill. 198; 2 Duer 110; 3 N. Y. 390. Returning to the Louisiana decisions, we find 44 A. 760, in which the plaintiff was decided to be exempt from taxation on money loaned on interest,

all credits, etc. We pretermit a discussion of this case, which seems to conflict with the principle contended for by us, as we have shown that the later decisions change the doctrine.

The Vermont case presents identically the same points as we will presently show as in the case at bar, the facts in it being that promissory notes held by an agent for a non-resident were taxable in Vermont, under a positive law to that effect. There are in some of the text writers on the subject of taxation, in the notes, cases cited as maintaining the contrary doctrine. A close examination of these cases, however, will show that the decisions in those cases turned on other points.

Such cases have been cited as containing contrary doctrine, such as 11 Allen 268. A close examination of this case shows that it does not sustain the doctrine. The tax sought to be collected in that case was under a special act levying a special tax on stock beloning to "stockholders residing out of the Commonwealth." The Court held it to be unconstitutional and invalid. 1st. Because it did not impose a uniform and proportional tax as required by the Constitution of Massachusetts. 2d. Because in conflicted with Art. 4, §2 of the U. S. Constitution in imposing a greater tax on non-residents than on residents, and denied equal "privileges and immunities of citizens of the several States," thus making a discrimination in favor of the citizens of Massachusetts." The Court further says that the general tax laws would not cover stock held by non-residents, for the reason that shares in corporations being personal property, follow the person and are taxable to the owner in the State where he has his domicile. But there is no where any intimation that a tax might not be laid by special provision of a statute on stock held by non-residents, provided it were uniform and proportional with that laid on residents. In other words'

it declares this particular special statute unconstitutional, and that under the general tax laws there is nothing that does away with the doctrine of *mobilia sequuntur personam*. So in 4 Woods 207, the case turned, 1st. on the question as to whether a municipality could tax its own bonds, and it was decided that it could not as it would impair the obligation of a contract; and 2nd. as to whether under the existing statutes (1883) non-resident holders could be taxed, and it was decided that they could not be. This case presents the same facts as the cases in 41 A., that is that there was no positive law doing away with the doctrine of *mobilia*, etc.

Some of the commentators on taxation cite also 43 Maine 497, which was an action in damages against township assessors for assessing property beyond their jurisdiction in another township. They were held responsible because there was no law which authorized them to do so, and therefore "they could only assess the inhabitants of the town and the property within it." To recur again to 21 Vt. 159. also cited, which lays down the correct doctrine. It was a case were notes due to a non-resident were taxed under a special law of Vermont. The Court, after discussing the doctrine of *mobilia sequuntur personam*, says: "But even if this doctrine is to be received and understood with this limitation, that there is no positive law of the country where the property is in fact which contravenes the law of his domicile; for if there is, the law of the owner's *domicil* must yield to the law of the State where the property in fact is situated" 11 N. Y. 563 was a case where a non-resident of a town different from that in which he resided in the State was taxed. The Court said: "The statute requires that the owner of personal estate should be assessed for it in town where he resides (1 R. S. 389, §55)." And declared the as-

sessment illegal. In 47 Connecticut 477, a citizen of New York was taxed on personal property in Connecticut. There was no statute under which a tax on a non-resident owner of personal property could be taxed and the Cotrt annulled the tax. 27 Grattan 344 does decide that the State cannot tax railway bonds held by non-residents.

67 Geo. 489 was a case of municipal corporation taxing its own bonds, and thus impairing obligations of its own. The Court decided that it conld not, and further said that pretermitting that question the statute did not authorize snch taxation, and further said "the payment of the debt or interest must be made before the power to tax can be exercised."

106 Ill. 25, also cited, fully sustains our contention. In that case it was sought to tax loans made in Illinois by a non-resident. The Court said: "If the owner is absent, but the credits are in fact here in the hands of an agent for renewal or collection, with the view of re-loaning the money by the agents as a permanent business, they have a *situs* here for the purpose of taxation, and there is jurisdiction over the things. Burroughs on Taxation, 44 *et seq.*" This was under a statute taxing "credits."

In 58 North Western 276, the Court held that certain money, notes, and mortgages belonging to a resident in the State of Wisconsin, but actually in the hands of his agent in the State of South Dakota, were taxable in South Dakota, the Court said: "We are disposed to hold that the situs of personal property owned by a non-resident, but employed in business in the State, and under control and management of an agent, is at the residenee of such agent for the purposes of taxation." The Court quotes the following from Reno on Non-Residents (chapter III) "The general rule is that a non-resident who makes an invest-

ment in a State of the Union holds it subject to all the laws of that State, both present and prospective. His property may therefore be taxed by the State, it may be subject to attachment and execution in accordance with its laws, his title may be divested nnder the Statute of limitations of the State in which his property is situated, and in other ways his property rights may be affected by State Action." The Court also says: "The fiction as to the situs of the property yields to the requirements of justice, and the actual situs is the place where the property is actually situated." The following authorities are cited in support of the doctrine: 1 Desty Taxation, 324; N. W. 249; 7 Fed. 558; Cooley, Taxn. 373; 58 Mo. 295; 73 Ill. 125; 28 N. W. 256.

In Poppleton vs. Yambrill Co., 23 Pacific 253, the tax authorities of the County of Yamhill, in the State of Oregon, undertook to assess and collect a tax, on an amount of money sent by Poppleton to the Territory of Washington, which was there invested in mortgage paper, which notes were held by Poppleton's agent in Washington Territory. The Supreme Court of Oregon sustained the tax, saying "The money, notes and mortgages were undoubtedly subject to taxation in Washington Territory. The right to tax them there is sustained by a line of decisions of the Courts upon the subject, since the one made in Catlin vs. Hull, 21 Vt. 152, down to the present time including Crawford vs. Linn Co. 11 Or. 482, 5 Pac. Rep. 738; and they are undoubtedly correct in principle." The opinion is somewhat lengthy, and the reasoning of the Court is able and conclusive.

We have thus reviewed all of the State decisions which we have been able to find which are cited on this point in the text books on taxation.

Federal Jurisprudence.

We now turn to the decisions of the U. S. Courts on this subject.

In 100 U. S. 499, the doctrine in 8 Howard, 82, is cited with approval, and the case cited says: "The taxing power of a State is one of its attributes of sovereignty. And where there has been no compact with the Federal government or cession of jurisdiction for the purposes specified in the Constitution, this power reaches all the property and business within the State, which are not properly denominated the means of the general government, and as laid down by this Court, it may be exercised at the discretion of the State."

In 7 Fed. Rep. 561, the Court said in reference to a tax of the State of Minnesotta on a personal property of a banker, a non-resident, in the hands of an agent in Minnesotta. 2. "That the law of Minnesotta existing in 1877 taxed personal property employed in trade or business in the State, whether the owner was a resident or non-resident. I think the personal property was employed in business within the meaning of the tax law of 1877. The law of 1878 taxed personal property in the State irrespective of ownership, and the tax for this year was legally imposed."

In 19 Fed. Rep. 360, the Court held in a case of a State tax under a special law, taxing mortgage notes owned by non-residents, which notes were within the State, the Court held (syllabus) "The State has power, so long as it does not trench upon the Constitution of the United States, to tax all persons, property and business within its jurisdiction or reach; and whether any person, property or business is so within its jurisdiction is not a federal question, and must be determined by the State itself."

In 22 Federal Reporter, 602, it was held that under the Statute of California intangible, movable property of a non-resident was not taxable in California, the Court saying, on p. 604: "The interest of defendant in the capital stock of the corporation being incorporeal and intangible, and having no situs apart from the person of the owner, he being a non-resident, without the jurisdiction of the State and the tangible property of the corporation, of which the capital stock is the representative, being also situated outside of the State, it *was not without some express constitutional or statutory provision making it so, if any sunh valid provision there could be, subject to the jurisdiction of the State, or to taxation within the State, through the medium of the shares of stock in the corporation; and we have seen that the provisions of the Constitution and Statute do not reach the case, as alleged in the complaint, there being no such express, unqualified provisions.*" The italics are our own.

In 100 U. S. 496, the question involved was as to the right of a State to tax a debt due to one of its own citizens by a non-resident, and the Court said it was not a subject which could be reviewed by the Federal Courts. In it the general doctrine of the situs of intangible property for purposes of taxation being that of the creditor is discussed, but there is no allusion to the exact principle involved herein.

In 169 U. S. 431, the question being presented therein as to the unconstitutionality of the tax law of Oregon taxing mortgages on real estate situated in Oregon, but held by parties resident in California, in which latter State the notes actually were in the hands of the owner, this Honorable Court said: "Although the right which the mortgage transfers in the land covered thereby is not the legal title, but only an equitable and

by way of security for the debt, *it appears to us to be clear upon the principle, and in accordance with the weight of authority, that this interest, like any other interest, legal or equitable, may be taxed to its owner (whether resident or non-resident) in the State where the land is situated without contravening any provision of the Constitution of the United States.*" The italicized clause is so marked by us.

In 60 Federal Reporter 31, it was held (syllabus) that "the rights conferred by a real estate mortgage are, in their very nature, rights attached to land, and hence such mortgages may properly be made taxable in the State and county where the lands lie, without regard to the residence of the owners of the mortgages, or to the fact that the instruments themselves are in possession of the owners."

In his brief the plaintiff and appellee in this case has laid great stress upon the decision of this Honorable Court on 15 Wallace, page 300, State tax on foreign held bonds. We do not think that that case has any bearing on the point at issue herein.

In 19 Federal Reporter, page 369, the Court said:

"And the case of State tax on foreign held bonds, 15 Wallace, 300, cited, and also much relied on by Counsel for the plaintiff, only decides that a State law which comes between the foreign lender and the local borrower, and compels the latter to pay a portion of the interest due the former on his debt, as taxes to the State, is void, because it impairs the obligation of a contract between the parties. And the same ruling could as well have been made on the ground if they had both been citizens of the State seeking to impose the tax. The case was before the Court on a writ of error to the judgment of the Supreme Court of the State of Pennsylvania, and

this was the only federal question in the case, and therefore the only one determined by it."

Besides this, in all the State tax cases on shares of a bank held by foreign shareholders, this Honorable Court has sustained the tax, thereby overruling any such interpretation as our opponents seem to place upon that decision.

In 34 Fed. Rep., page 356, where taxes on $200,000 mortgages held by a Pennsylvania corporation for the benefit of a non-resident of the State of Pennsylvania were levied by the State, the Court said:

"Has the State the power to impose this tax? In several of the State Supreme Courts this question has been the subject of consideration, and it has been uniformly held that property is taxable by the States as against the trustee at his place of residence, where the cestuis qne trustent are non-residents. People vs. Assessors, 40 N. Y. 154; Latrobe vs. Baltimore, 19 M. D. 13; Calliny Hall, 31 Vt. 153; Dorr vs. Boston, 6 Gray 131. In Pennsylvania, since the act of 1856, the decisions of the Supreme Court are of similar effect. Thus in Borough of Carlisle vs. Marshall, 36 Pa. St. 401, where the cestuis que trustent were non-residents, and the trustee a resident of the State, the Court declares that the fund in the hands of the trustee was taxable for State purposes at his place of reaidence under the act of 1846. See also West Chester vs. Darlington, 38 Pa. St. 137. In the Supreme Court of the United States no case has been decided involving the question presented here. Corelative questions have arisen, and have been adjudicated, but they do not furnish any authoritative guide to the determination of this case. State Tax on Foreign Held Bonds Cases, 15 Wall 300, is the leading case of its class. By a law of the State of Pennsylvania, a tax was imposed upon bonds issued by a

Pennsylvania railroad corporation, and owned and held by non-residents. It is to be noted that the legal and beneficial ownership of the subject of taxation were both in another State than Pennsylvania, determinable by the residence of each owner, and hence was beyond the jurisdiction of the latter. The Court held that the law was invalid, as impairing the obligation of a contract, between the corporation and its creditors, and that as the situs of the property taxes was outside of the State, it was beyond her jurisdiction. Speaking of the power of taxation, the Court says: 'It may touch property in every shape—in its natural condition, in its manufactured form, and in its various transmutations. It may touch business in the almost infinite forms in which it is conducted—in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution the power and the mode, form and extent of taxation is unlimited, when the subject to which it applies are within her jurisdiction.' In the present case, the trust property in question was transferred to the trustee, a Pennsylvenia corporation, by two deeds of trust, and by the will of Samuel Harlan, to be held for the benefit of his daughter, Mrs. Price, during life, and then to be paid to her appointees or her children. The legal title and ownership of the property was thus vested in the Trust Company, and is under its control, subject only to the terms of the trust. The trustee is domiciled in the State of Pennsylvania, as a creature of its laws, and hence the situs of the property is in that State, where the trustee resides. It is thus in her own jurisdiction, and within the reach of her taxing power. The bill is dismissed at the cost of the complainants."

We cannot better close this brief on this point than by quoting the following decision from the 141 U. S., page 18.

Mr. Justice Gray, as the organ of the Court, delivered the following opinion :

"Upon this writ of error whether this tax was in accordance with the law of Pennsylvania is a question on which the decision of she highest Court of the State is conclusive. The only question of which this Court has jurisdiction is whether the tax was in violation of the clause of the Constitution of the United States granting to Congress the power to regulate commerce among the several States. The plaintiff in error contends that its cars could be taxed only in the State of Illinois in which it was incorporated, and had its principal place of business.

No general principles of law are better settled; or more fundamental, than that the legislative power of every State extends to all property within its borders, and only so far as the comity to that State allows, can such property be affected by the law of any other State. The old rule expressed in the old *maxim mobila sequunntur personam*, by which personal property was regarded as subject to the law of the owners' domicile, grew up in the middle ages, when movable property consisted of gold and jewels, which could be easily carried from place to place, or secreted in spots known only to himself. In modern times since the great increase in amount and variety of personal property, not immediately connected with the person of the owner, that rule has yielded more and more to the lex situs, the law of the place where the property is kept and used. Green vs. Van Buskirk, 73 U. S., 5 Wall 307 (18-599) and 74 U. S., 7 Wall. 139 (19-109); Hervey vs. Rhode Island Locomotive Works, 83 U. S. 664 (23-109); Harkness vs. Russell. 118 U. S. 663,679 (30-385,290); Walworth vs. Harris, 139 U. S. 355 (32-713); Story on Conflict of Laws, 550 ; Wharton

on Conflict of Laws, 297-311. As observed by Mr. Justice Story, in his commentaries just cited. 'Although movables are for many purposes to be deemed to have no situs, except that of the domicile of the owner, yet this being but a legal fiction, it yields whenever it is necessary for the purpose of justice that the actual situs of the thing should be examined. A nation within whose territory any personal property is actually situated has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situated there.' For the purpose of taxation as has been repeatedly affirmed by this Court, personal property may be separated from its owner, and he may be taxed on its account, at the place where it is, although not the place of the owners' domicile, and even if he is not a citizen or resident of the State which imposes the tax. Lane County vs. Oregon, 74 U. S., 7 Wall 71-77 (19-101-104); Cleveland, P. & A. R. Co. vs. Pennsylvania, 82 U. S., 15 Wall. 300, 323, 324, 328 (21-179-188-189); Union Pc. R. R. Co. vs. Penniston, 88 U. S., 18 Wall 5, 29 (22-787-791); Tappan vs. National Bank, 86 U. S., 19 Wall. 490, 499 (22-189-193); State Ratlroad Tax Cases, 92 U. S., 575, 607, 608 (23-663-671); Brown vs. Houston, 114 U. S., 622 (28-257); Coe vs. Erroll, 116 U. S., 517, 824 (29-715-717); Marye vs. Balttmore & O. R. Co. 127 U. S.; 117, 123 (32-94-96.

It is equally well settled that there is nothing in the Consti. tution or laws of the United States which prevents a State from taxing personal property employed in interstate or foreign commerce, like other personal property within its jurisdiction. Delaware Railroad Tax, 85 U. S. 18 Wall. 206, 232 (22-888, 896); Western Union Tel. Co. vs. Texas, 105, U. S. 460, 464 (26-1067, 1068); Gloucester Ferry Co. vs. Pennsylvani, 114 U. S. 196, 206, 211 (29-188, 163, 164); Western Union

Tel. Co. vs. Massachussets, 125 U. S. 530, 549 (31-790, 793); Marye vs. Baltimore & O. R. Co., 127, 124 (32-94, 96); Lesoup vs. Port of Mobile, 127 U. S. 640, 649 (3E-311, 314)."

Comptainant asserts in her bill (4th R. p, 2) that the minors McCan inherited $228,271.60 in bonds of the City of New Orleans and State of Louisiana, which she declares under the law are not taxable, and in the 10th clause of her bill she pretends that these bonds are included in the $800,000 assessments, and that such inclusion is an attempt to violate the Constitution of the United States by unfairing the obligation of contracts.

We call your Honors' attention to the copy of assessment roll found intnrleaved at page 26 of the Record—You will find a column numbered 5, which, under the caption of credits, bills receivable, etc., charges an assessment of $800,000, and in the same document you will find a column numbered 16, under the caption "bonds, etc." under which head nothing is assessed at all.

Therefore, the evidence furnished by the complainant herself, proves conclusively she was not assessed at all as owning any bonds of any description. Consequently, there is no question here involved of any taxation of non-taxable bonds. Simply and solely, the question is, is the assessment of $800,000 for credits, bills receivable, etc., correct or not?

This resolves itself into two considerations, as raised by complainant in her brief, and, in a slight measure in her pleadings,

First, is not the whole $800,000 assessment illegal, because, as complainants reside outside of Louisiana, their personal property, though situated permanently in Louisiana, is taxable only at the owners' domicile.

Second, if it is taxable in Louisiana, then should not the amount of assessment be reduced by deducting therefrom the $228,271.60 of non-taxable bonds.

As to the first proposition, we have discussed that at length in this brief, and therefore will now address ourselves to the second:

The law of Louisiana, relative to assessments, as found in Act 106 of the Louisiana Legislature passed in 1890, the portion which is relative thereto, we quote hereinafter.

The method of assessment in Louisiana is; first, the Assessors send to every taxpayer a blank form for the taxpayer to fill out, giving valuation of his property, etc. If the taxpayer fills in the amount, the Assessors, if they approve his valuation, accept same as the basis of their assessment. If on the other hand the taxpayer fails to send in this form, then the Assessors use their own discretion as to the valuation of his property. In either event the valuation is subject to correction. The correction is as follows:

The Assessors having completed the rolls, advertise in the newspapers that the assessment rolls for the ensuing year are ready for examination. This advertisement is inserted about the 1st of March and the rolls remain exposed to public examination for twenty days.

During these twenty days any property owner who questions the valuation of his property, appears before them and makes an application for its correction. If the Board of Assessors (for the parish of where the complainant's property was assessed) refuses this application, then the taxpayer can apply to the City Council of New Orleans for a correction, and if the the City Council refuses to correct, then the taxpayer has recourse to the Courts. But the jurisprudence of this State is that the application to the Courts is in the nature of an appeal from the decision of the Board of Assessors and City Council, and consequently unless application was made to these two bodies and

refused by them the taxpayer is not allowed to appeal to the Courts for relief. This doctrine settled by the Supreme Court of Louisiana in the case of Shattuck & Aoffman vs. City of New Orleans et al., in 1887, reported in 39 An. p. 206, wherein the Court said:

"The taxpayer before bringing suit for the reduction or correction of an essessment, must as a condition precedent, make the preliminary opposition thereto and application for redress provided for by law."

This is the leading case on the subject in Louisiana and has been cited approvingly scores of times since it original rendition. There is a distinction drawu by the Courts of Louisiana between the application for a reduction or correction of an assessment and the entire cancellation of an assessment. The former application for reduction and correction cannot be brought into Court, unless as is stated in the Shattuck & Hoffman case, application has been previously made to the Board of Assessors and City Council for relief.

But in the second class, where an application is for an entire cancellation of an assessment, no previous application to the revising bodies is required. See Morgan's Louisiana T. & R. S. S. Co., vs. Precot, Sheriff, et als. 50 La. An page 737. Wherein it is cited:—

"A distinction is to be drawn between suits to correct an assessment and suits which go to the inherent validity of an assessment and to the illegality of the tax based thereon." "Those of the first class mnst be instituted within the time fixed by the statute. Those of the latter class are not subject to such time limit."

This present case, we submit to your Honors is not an application for the reduction or correction of an assessments; it is

one for an entire cancellation. The prayer of the complainant (See transcript page 6) is:

"That the Board of Assessors for the Parish of Orleans be condemned and ordered to erase and cancel from the assessment rolls of 1896 the assessment against the estate of D. C. McCan, on the rolls of the third assessment district, square 19, of moneys loaned, advanced, etc., $800,000. and cash on hand, bills receivable, etc., $15,000. and that said assessment be declased illegal, null and void."

There is no prayer for any reduction, neither in the precedent application made by plaintiff to the Board of Assessors for the parish of Orleans (printed at page 28 of the Transcript) and to the City Council of New Orleans (printed at page 31 of the Transcript) is there any prayer for a reduction or correction in any shape. Consequently she should not be heard here to urge any application for a reduction of her assessment. This reduces the controversy to the question of the illegality of the entire assessment of $800,000. A suit for cancellation can not be converted into a suit for reduction. The applicant for cancellation must stand or fall as such.

An examination of the application made to the City Council and to the Board of Assessors will show that no demand was made on them for a change of the assessment on the $800,000, monies loaned, etc., from the estate of D. C. McCan to the names of the minors represented by the complainant. There was no assertion made that the complainant desired the name of the assessment on the personal property changed from the estate of McCan to the minors Stemple. On the contrary, while the application was made to have the real estate assessment changed to the names of the minors, yet acquiescence was had in the assessment in the name of the estate on the

personal property to the extent of paying the taxes due for 1897 on the estate of D. C. McCan on such an assessment, (see tax bill printed at page 33 of the Transcript) and on that tax bill it is stated that this personal property was located at the corner of Coliseum and Third streets, New Orleans, which was at that time the residence of the owners of the property.

We hold that their payment of this tax bill, and their failure to make any claim or request on the City Council and Board of Assessors to change the name of the assessment on their personal property, constituted an acquiescence on their part in the correctness of the assessment is so far as the name was concerned.

And, as stated before, this resolves the case to the question of whether or not the entire assessment is illegal, null and void, because of the claim of complainant that the residence of her wards, the owners of the property is, or was outside of the State of Louisiana, and as this branch of the case has formed the burden of the other portion of our brief, it will not be repeated here.

We respectfully submit that the assessment herein attacked should be maintained in its entirety.

All of which is respectfully submitted,

J. J. McLOUGHLIN,
Solicitor for City of New Orleans.

F. C. ZACHARIE,
Solicitor for Tax Collector and Board of Assessors.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 286.

CITY OF NEW ORLEANS, THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, AND GEORGE B. PENROSE, TREASURER OF THE CITY OF NEW ORLEANS, APPELLANTS,

VS.

MARY G. T. STEMPEL (WIFE OF EDWARD STEMPEL) GUARDIAN OF THE INFANTS, FANNY TOBIN McCAN ET ALS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE FIFTH CIRCUIT AND EASTERN DISTRICT OF LOUISIANA.

Brief on behalf of Mary G. T. Stempel, Guardian, Appellee.

All the assignments of errors in this case present but one question, and that is as to the validity and legality of the assessment upon property, consisting of negotiable notes, mortgages, bonds, etc., belonging to appellees who are non-residents of Louisiana.

I.

The assessment of the property belonging to the wards of appellee, in the name of the Estate of D. C. McCan, for the year 1896, was clearly illegal.

It is averred in the bill that "at the time said illegal assessment "was made by the Board of Assessors of the parish Orleans, as afore-"said, the estate of D. C. McCan had ceased to exist, the legal heirs,

"the infant wards of your oratrix above named, having been recog-
"nized and sent into possession thereof through your oratrix, as their
"guardian." (T. 3 and 4).

In the answer, defendants admit that the complainant and her wards were the sole legal heirs of the deceased, and as such sent into possession of the property.

The minors, Fanny Tobin McCan, David Chambers McCan, Kate Elizabeth McCan and Charles Patterson McCan, were recognized as the sole legal and forced heirs of D. C. McCan, and through their guardian, Mrs. Mary G. T. Stempel, were put into possession of the property of said D. C. McCan by final judgment, signed on February 24th, 1896 (T. 48 and 49). This fact was made known to the Board of Assessors for the parish of Orleans on March 17th, 1896, when the assessment rolls were exposed for correction.

"Where the heirs have been put in possession of their father's
"and mother's estate by the probate court, the succession is termi-
"nated." Succ. of Dunford and Wife, 25 A. 56.

"When the widow and heirs were put in possession by order of
"court, the succession was closed; it was not thereafter in the power
"of the court to re-open it." Succession of Hacker, 28 A. 446; Beauregard vs. Lampton, 33 A. 827; Caire et al. vs. Judge, 43 A. 1136; Succession of McCan, 48 A. 145.

Due application was made by the complainant to the Board of Assessors of the parish of Orleans, and afterwards to the Committee of Assessments of the City Council, as prescribed by Section 26 of Act 106 of the General Assembly of Louisiana, of 1890, to have the assessment on real estate changed, and the assessment on notes, bonds, etc., cancelled. At the time of this application, the complainant representing her wards, had been sent into possession of the estate of the late D. C. McCan, and this judgment had been recorded; the assessment roll was not completed until the 1st of June, 1896. See Section 31 of said act.

"It would seem, then, that the assessor is expected to take notice
"of, and conform his rolls to recorded changes in titles as long as the
"rolls remain in his hands. The provision that transfers subsequent
"to the filing of the rolls are not to be regarded, seems to imply that
"those prior to that time must be. Up to the time of filing, the
"assessor has control of the rolls, and can alter them in all respects so
"as to conform to the facts. After they are filed, they pass from his
"control and he has nothing more to do with them." Saunders on Taxation, pp. 98 and 99.

II.

The property assessed and sought to be taxed consists of negotiable notes secured by mortgage, bonds, etc., all belonging to the infant wards of appellee, who, with appellee, their mother and guardian,

are domiciled in the county of Kings, State of New York. This fact is specially charged in the bill, and admitted in the answer. (T., pp. 1 and 2 and 14). The fact that these evidences of debt, choses in action, or, as they are called in Louisiana, "incorporeal rights," were at the time the assessment was made in the possession of an agent in New Orleans, in no manner affects the principle that they could only be taxed at the domicile of the owners, under the maxim, *mobilia sequntur personam.*

The incorporeal rights or intangible choses in action, sought to be assessed in this case, have no other *situs* than the domicile of the owners, which is in the State of New York. Debts are not property. State Tax on Foreign Held Bonds, 15 Wall. 300;

Murray vs. Charleston, 96 U. S. 432;

Kirtland vs. Hotchkiss, 100 U. S. 496;

Clason & Co. vs. City of N. O., 46 A. 1;

V. & A. Meyer & Co. vs. Sheriff, 41 A. 645;

Paving Co. et al. vs. City, 41 A. 1015;

Liverpool & London & Globe Ins. Co. vs. Board of Assessors, 44 A. 760;

Railey vs. Board of Assessors, 44 A. 765.

"Taxes imposed on a non-resident, whose property is not in the State are null, as tax laws can have no extra-territorial effect.

"Debts due to a non-resident (still in non-concrete form) have "their *situs* at the domicile of the creditor and not at the domicile "of the debtors."

The Liverpool & London & Globe Ins. Co. vs. Board of Assessors et al., not yet reported (Supreme Court of Louisiana).

The views expressed in the foregoing decisions were recognized by the Supreme Court of Louisiana, in the case of C. H. Parker, Tax Collector, vs. Strauss, 49 A. p. 1173.

III.

Two hundred and thirty thousand dollars of the property sought to be assessed is evidenced by State and city bonds. This is shown by the averments of the bill and the testimony of Albert Baldwin. The remainder consists of promissory notes, secured by mortgage, drawn by debtors residing in Louisiana, and held by the complainant, in her capacity as guardian. To permit the assessment on State and city bonds would impair the obligation of the contract, as held in 96 U. S., p. 432; and the other evidences of debt or incorporeal rights are *not* assessable in Louisiana—the owners thereof being domiciled in the State of New York.

The assessment stands in lieu of citation, and when shown to be erroneous and illegal, as in this case, all the subsequent proceedings had thereon are void.

IV.

The contention in the second assignment of errors that complainants are estopped from questioning the assessment, because (1) the taxes on other property assessed in the name of the estate of D. McCan, were paid by appellee is fallacious, for the reason, that although the assessment on this property was in the name of the estate of D. C. McCan, who was not, at that time, the owner, yet the property was liable to taxation, and the assessment could have been corrected by changing it to the name of complainant, as provided by section 11 of Act 106, of 1890, which reads as follows:

"*That if any* tract or lot of land, or other *property shall be* omitted "in the assessment of any year or series of years, or in any way *erro-* "*neously assessed, the same*, when discovered, *shall be assessed by the* "*assessor*, or tax collector, *for the whole period for which the same may* "*have been* omitted or *improperly assessed*, and shall be subject to the "State, parish and municipal taxes which have been or may here- "after be assessed against said property in accordance with law; pro- "vided, no back taxes for more than three years shall be assessed "against the property; and, provided further, that such assessment "shall appear upon a supplemental roll and be filed in the manner as "regulated by law."

It was unnecessary to do a vain and useless thing, which would not have resulted in any benefit whatever to complainants, as the property upon which they paid the taxes could have been correctly reassessed in their names.

2d. Moreover, the complainants are minors, and "minors can never be estopped." Zunts vs. Courcelle, 16 A. 98.

We, therefore, ask that the decree appealed from be affirmed with costs.

Respectfully submitted,

E. HOWARD McCALEB.

NEW ORLEANS *v.* STEMPEL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 65. Argued October 25, 1899. — Decided December 4, 1899.

Section 7 of Chapter 106 of the Louisiana Statutes of 1890, after declaring "that it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation," contained the following provision: "This shall apply with equal force to any person or persons representing in this State business interests that may claim a domicil elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicil of said non-resident, his agent or representative." The defendant in error who was domiciled in the city of New York was the owner of credits which were evidenced by notes largely secured by mortgages on real estate in New Orleans; and these notes and mortgages were in the city of New Orleans, in possession of an agent of the defendant in error, who collected the interest and principal as it became due and deposited the same in a bank in New Orleans to her credit. *Held*, that under the act of 1890, as interpreted by the Supreme Court of the State, this property in the hands of

Statement of the Case.

the agent was subject to taxation in New Orleans, and that such taxation did not infringe any right secured by the Federal Constitution.

Conceding as matter of fact that the assessment in this case was technically in the wrong name, the error is not one that will justify equitable relief by injunction.

Under the issue presented by the pleadings no question of overvaluation was before the court.

The rule in such a case is that the Federal courts follow the construction placed upon the statute by the state courts, and in advance of such construction they should not declare property beyond the scope of the statute and exempt from taxation unless it is clear that such is the fact.

It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicil of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin; notes and mortgages are of the same nature.

This case came on appeal from the Circuit Court of the United States for the Eastern District of Louisiana. It is a suit brought by the appellee to restrain the collection of taxes levied upon certain personal property which she claims was exempt from taxation. The important facts are these: The plaintiff, as well as the infants whose guardian she is, and for whose benefit she brings this suit, are residents of the State of New York, in which State she has been duly appointed the guardian of their estates. The infants inherited certain property from their grandfather, a resident of Louisiana, whose estate was duly settled in the proper court of that State. By regular proceedings these infants had been adjudged his legal heirs, and she, as guardian, had been put in possession of their property thus inherited. The order of the court, in this respect, was rendered February 14, 1896, and the taxes which were sought to be restrained were those for that year. The assessment, as appears by the assessment roll, was in the name of "the estate of D. C. McCan;" was of $15,000, "money in possession, on deposit, or in hand," and of $800,000, "money loaned on interest, all credits and all bills receivable, for money loaned or advanced, or for goods sold; and all credits of any and every description." The principal contentions of the plaintiff were: First, that included within this personal property was some $228,000 of bonds of the State of Louisiana,

taxation of which by the State or any of its municipalities was void, as impairing the obligation of a contract made by the State. Second, that the situs of the loans and credits was in New York, the place of residence of the guardian and wards, and, therefore, being loans and credits without the State of Louisiana they were not subject to taxation therein.

Mr. F. C. Zacharie for appellants. *Mr. J. J. McLoughlin* was on his brief.

Mr. E. Howard McCaleb for appellee.

Mr. Justice Brewer, after making the above statement, delivered the opinion of the court.

A preliminary question made by the plaintiff is that she had applied to have the assessment in the name of the estate of D. C. McCan stricken off on the ground that the administration of the estate had been finally closed and the property put into the possession of the heirs, which application was denied; that, therefore, the assessment was in the wrong name and could not be sustained. We are of the opinion, however, that there was no error in the ruling of the Circuit Court in this respect, for, conceding that as a matter of fact the assessment was technically in the wrong name, the error is not one that will justify the equitable relief by injunction.

The important question is whether the property was subject to taxation. With regard to the contention that certain bonds were included in the assessment which were not subject to taxation on account of the supposed contract of the State of Louisiana, it is sufficient to say that the assessment does not purport to include any bonds. The assessment roll is prepared so as to show in separate columns the different kinds of property included in the assessment. One column is entitled "bonds of all kinds, specifying each kind and their value," and under this heading there is no mention of any property. So, while it would seem probable from the testimony as to the amount of personal property belonging to the estate that

the assessor may have in fact included the bonds, yet upon the face of the record the only assessment is of credits and money. It may be a case of overvaluation of assessable property, but under the issue presented by the pleadings that question was not before the court.

Under the circumstances disclosed by the testimony, were the money and credits subject to taxation? It appears that these credits were evidenced by notes largely secured by mortgages on real estate in New Orleans; that these notes and mortgages were in the city of New Orleans, in possession of an agent of the plaintiff, who collected the interest and principal as it became due and deposited the same in a bank in New Orleans to the credit of the plaintiff. The question, therefore, is distinctly presented whether, because the owners were domiciled in the State of New York, the moneys so deposited in a bank within the limits of the State of Louisiana, and the notes secured by mortgages situated and held as above described, were free from taxation in the latter State. Of course, there must be statutory warrant for such taxation, for if the legislature omits any property from the list of taxables the courts are not authorized to correct the omission and adjudge the omitted property to be subject to taxation. We need not extend our inquiries back of the year 1890, for in that year the legislature passed an act amending the revenue statutes of prior years, and the questions, therefore, are whether under that statute, as interpreted by the Supreme Court, these properties were subject to taxation, and, if so subjected, whether any rights secured by the Federal Constitution were thereby infringed. That act is Chapter 106 of the Statutes of 1890, (Acts La. 1890, 121).

Section 1 enumerates among the property subject to taxation "all rights, credits, bonds and securities of all kinds, promissory notes, open accounts and other obligations; all cash."

Section 7 (p. 124), after declaring "that it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation," closes with this provision:

"And this shall apply with equal force to any person or persons representing in this State business interests that may claim a domicil elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicil of said non-resident, his agent or representative."

This statute came before the Supreme Court in *Liverpool &c. Insurance Co.* v. *Board of Assessors*, 44 La. Ann. 760, where the question was whether a foreign insurance company could be taxed for the amount of the premiums due from its insured living in Louisiana, and it was held that those premiums were simply credits and therefore not taxable, the court saying (page 765):

"We are dealing exclusively with the question of credits as assessed, and we hold as decided in 41 La. Ann. 645, 1015, 'that debts have their situs at the domicil of the creditor,' because debts are property and have a value, which is inseparable from the creditor, and because the State has no greater power or jurisdiction to tax debts due to non-resident creditors than it has to tax any other personal property of such non-residents which is not situated in the State."

The same proposition was affirmed in the succeeding case, *Railey* v. *Board of Assessors*, 44 La. Ann. 765, the court, however, calling attention to this distinction (page 770):

"There is no doubt of the legislative power to modify the rule of comity, *mobilia personam sequuntur*, in many respects. Movables having an actual situs in the State may be taxed there, though the owner be domiciled elsewhere. Even debts may assume such concrete form in the evidences thereof that they may be similarly subjected when such evidences are situated in the State, as in the case of bank notes, public securities, and, possibly, of negotiable promissory notes, bills of exchange or bonds.

"But as to mere ordinary debts, reduced to no such concrete

forms, they are not capable of acquiring any situs distinct from the domicil of the creditor, and no legislative power exists to change that situs so far as non-resident creditors are concerned. As said by the Supreme Court of the United States: 'To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things, in debts, belongs to the creditors to whom they are payable, and follows their domicil wherever that may be. Their debts can have no locality separate from the parties to whom they are due.' *State Tax on Foreign-held Bonds*, 15 Wall. 300."

In *Clason* v. *New Orleans*, 46 La. Ann. 1, 5, the court affirmed the same proposition in respect to a deposit in a bank to the credit of the non-resident, saying: "We cannot distinguish between the debt due to the plaintiffs by a bank as arising from a deposit to the credit of the firm in money, and that due to it from any other cause."

This decision was, however, qualified in *Bluefield Banana Company* v. *Board of Assessors*, 49 La. Ann. 43, the court there saying that the decision rested upon the special facts of that case; that there was really no general deposit, but that the local bank was simply a medium through which the funds of the non-resident kept at the place of his residence were drawn against for the purpose of making payments in Louisana, and in this latter case it was held that, where a non-resident had an agent in New Orleans who disposed of the property of his principal as it was forwarded in the course of business and deposited the proceeds thereof in bank to the credit of his principal, the sum thus deposited was subject to taxation. This is the language of the court after its reference to the *Clason case* (*supra*, page 48):

"The case is different here. The foreign corporation had an agent here, where it received and where it sold fruit and received the price for the same. Part of the proceeds were withheld in the hands of the agents for purposes incidental to the prosecution of its business, and part deposited to the credit of the company, subject to the check of its local agent. Also for the prosecution of its business here, and for such other purposes as the company might direct it to be applied to. The company

transacted business in New Orleans precisely as did resident business men and firms. It received all the advantages to be derived from the state and city governments which residents received, and we see no reason why it should not be taxed, as claimed in this proceeding, unless there be insuperable legal objections in the way. We find a statute of the State, which by its terms brings them under the operation of state and city taxation, and we are bound to give effect to its provisions unless they be in derogation of the Constitution. The unconstitutionality of the act is not pleaded, and we, of ourselves, see no unconstitutional features in it. The rule *mobilia sequuntur personam* is a fiction of the law, not resting of itself upon any constitutional foundation, and which gives way before express laws, destroying it in any given case where constitutional requirements themselves do not stand in the way."

This was reaffirmed in *Parker, Tax Collector*, v. *Strauss & Co.*, 49 La. Ann. 1173, in which the court says (page 1175):

"The revenue act, in entire accordance with the conceded extent of the taxing power, taxes the movable property of a foreigner. We cannot hold that cash thus liable to taxation is exempted, because for convenience it is deposited in bank and checked on by the owner. It would be a strain to apply to the deposited cash the exemption from taxation accorded to debts in their ordinary significance, due to the foreign creditor."

The last case to which our attention has been called is that of *Liverpool &c. Insurance Company* v. *Board of Assessors*, 51 La. Ann. p.—; 25 S. Rep. 979. In that case the court reaffirmed its prior rulings that "a debt due to a non-resident (still in non-concrete form) has its situs at the domicil of the creditor, and not at the domicil of the debtor," and therefore is not subject to taxation by the State which is the latter's domicil. At the same time it observed, in its discussion of the question, that the law requiring debts to be assessed for taxation "was intended for all such debts as are evidenced by note or by mortgage, or that are in such other concrete form as to render it possible to subject them to taxation under the present laws. No attempt has been made since the cited decisions

were rendered to localize 'debts' or 'open accounts' such as those upon which the taxes are now claimed."

From this review of the decisions of the Supreme Court of the State it is obvious that moneys, such as those referred to, collected as interest and principal of notes, mortgages and other securities kept within the State and deposited in one of the banks of the State for use or reinvestment, are taxable under the act of 1890. They are property arising from business done in the State; they were tangible property when received by the agent of the plaintiffs, and as such subject to taxation, and their taxability was not, as the court holds, lost by their mere deposit in a bank. It is true that when deposited the moneys became the property of the bank, and for most purposes the relation of debtor and creditor arose between the bank and the depositor; yet as evidently the moneys were to be kept in the State for reinvestment or other use they remained still subject to taxation, according to the decision in 49 La. Ann. 43. With regard to the notes and mortgages, it may be conceded that there is no express decision of the Supreme Court to the effect that they were taxable under the law of 1890, yet the reasoning of that court in several cases and its declarations, although perhaps only dicta, show that clearly in its judgment they had a local situs within the State, and were by the statute of 1890 subject to taxation.

When the question is whether property is exempt from taxation, and that exemption depends alone on a true construction of a statute of the State, the Federal courts should be slow to declare an exemption in advance of any decision by the courts of the State. The rule in such a case is that the Federal courts follow the construction placed upon the statute by the state courts, and in advance of such construction they should not declare property beyond the scope of the statute and exempt from taxation unless it is clear that such is the fact. In other words, they should not release any property within the State from its liability to state taxation unless it is obvious that the statutes of the State warrant such exemption, or unless the mandates of the Federal Constitution compel it.

If we look to the decisions of other States we find the frequent ruling that when an indebtedness has taken a concrete form and become evidenced by note, bill, mortgage or other written instrument, and that written instrument evidencing the indebtedness is left within the State in the hands of an agent of the non-resident owner, to be by him used for the purposes of collection and deposit or reinvestment within the State, its taxable situs is in the State. See *Catlin* v. *Hull*, 21 Vermont, 152, in which the rule was thus announced (pages 159, 161):

"It is undoubtedly true that, by the generally acknowledged principles of public law, personal chattels follow the person of the owner, and that, upon his death, they are to be distributed according to the law of his domicil; and in general, any conveyance of chattels, good by the law of his own domicil, will be good elsewhere. But this rule is merely a legal fiction, adopted from considerations of general convenience and policy, for the benefit of commerce and to enable persons to dispose of their property, at their decease, agreeably to their wishes, without being embarrassed by their want of knowledge in relation to the laws of the country, where the same is situated. But even this doctrine is to be received and understood with this limitation, that there is no positive law of the country, where the property is in fact, which contravenes the law of his domicil; for if there is, the law of the owner's domicil must yield to the law of the State, where the property is in fact situate."

* * * * *

"We are not only satisfied that this method of taxation is well founded in principle and upon authority, but we think it entirely just and equitable that, if persons residing abroad bring their property and invest it in this State, for the purpose of deriving profit from its use and employment here, and thus avail themselves of the benefits and advantages of our laws for the protection of their property, their property should yield its due proportion towards the support of the government, which thus protects it."

In *Goldgart* v. *People*, 106 Illinois, 25, 28, the court said:

"If the owner is absent, but the credits are in fact here, in the hands of an agent, for renewal or collection, with the view of reloaning the money by the agent as a permanent business, they have a situs here for the purpose of taxation, and there is jurisdiction over the thing."

In *Wilcox* v. *Ellis*, 14 Kansas, 588, the power of the State to tax a citizen and resident of Kansas, on money due him in Illinois, evidenced by a note, which was left in Illinois for collection, was denied, the court saying, (603) after referring to the maxim, *mobilia sequuntur personam:*

"This maxim is at most only a legal fiction; and Blackstone, speaking of legal fictions, says, 'this maxim is invariably observed, that no fiction shall extend to work an injury, its proper operation being to prevent a mischief, or remedy an inconvenience that might result from the general rule of law.' 3 Blackstone Com. 43. Now as the State of Illinois and not Kansas must furnish the plaintiff with all the remedies that he may have for the enforcement of all his rights connected with said notes, debts, etc., it would seem more just, if said debt is to be taxed at all, that the State of Illinois and not Kansas should tax it, and that we should not resort to legal fictions to give the State of Kansas the right to tax it."

The same doctrine was affirmed in *Fisher* v. *Commissioners of Rush County*, 19 Kansas, 414, and again in *Blain* v. *Irby*, 25 Kansas, 499, 501, in which the court said, referring to promissory notes: "They have such an independent situs that they may be taxed where they are situated."

The decisions of the highest courts of New York, in which State these plaintiffs reside, are to the same effect. In *People* v. *Trustees*, 48 N. Y. 390, 397, the court said:

"That the furniture in the mansion and the money in the bank were, under these provisions, properly assessable to the relators is not seriously disputed. And I am unable to see why the money due upon the land contracts must not be assessed in the same way. The debts due upon these contracts are personal estate, the same as if they were due upon notes or bonds; and such personal estate may be said to exist where the obligations for payment are held. Notes, bonds and other contracts for the

payment of money have always been regarded and treated in the law as personal property. They represent the debts secured by them. They are the subject of larceny, and a transfer of them transfers the debt. If this kind of property does not exist where the obligation is held, where does it exist? It certainly does not exist where the debtor may be and follow his person. And while, for some purposes in the law, by legal fiction, it follows the person of the creditor and exists where he may be, yet it has been settled that, for the purpose of taxation, this legal fiction does not, to the full extent, apply, and that such property belonging to a non-resident creditor may be taxed in the place where the obligations are held by his agent. *Hoyt* v. *Commissioners of Taxes*, 23 N. Y. 238; *The People* v. *Gardner*, 51 Barb. 352; *Catlin* v. *Hull*, 21 Vermont, 152."

This proposition was reaffirmed in *People ex rel.* v. *Smith*, 88 N. Y. 576, in which the Court of Appeals of that State held that a resident of New York was not liable to taxation on moneys loaned in the States of Wisconsin and Minnesota on notes and mortgages, which notes and mortgages were held in those States for collection of principal and interest and reinvestment of the funds, it appearing that property so situated within the limits of those States was there subject to taxation. See also *Missouri* v. *St Louis County Court*, 47 Missouri, 594, 600; *People* v. *Home Insurance Company*, 28 California, 533; *Billinghurst* v. *Spink County*, 5 S. Dak. 84, 98; *In re Jefferson*, 35 Minn. 215; *Poppleton* v. *Yamhill County*, 18 Oregon, 377; *Redmond* v. *Commissioners*, 87 N. C. 122; *Finch* v. *York County*, 19 Nebraska, 50.

With reference to the decisions of this court it may be said that there has never been any denial of the power of a State to tax securities situated as these are, while there have been frequent recognitions of its power to separate for purposes of taxation the situs of personal property from the domicil of the owner. In *State Tax on Foreign-held Bonds*, 15 Wall. 300, it was held that while the taxing power of the State may extend to property within its territorial limits, it cannot to that which is outside those limits, and therefore that bonds issued by a railroad company, although secured by a mortgage on property

within the State, were not subject to taxation while in the possession of their owners who were non-residents, the court saying: "We are clear that the tax cannot be sustained; that the bonds, being held by non-residents of the State, are only property in their hands, and that they are thus beyond the jurisdiction of the taxing power of the State." But in the same case, on page 323, the court declared: "It is undoubtedly true that the actual situs of personal property which has a visible and tangible existence, and not the domicil of its owner, will, in many cases, determine the State in which it may be taxed. The same thing is true of public securities consisting of state bonds and bonds of municipal bodies, and circulating notes of banking institutions; the former, by general usage, have acquired the character of, and are treated as, property in the place where they are found, though removed from the domicil of the owner; the latter are treated and pass as money wherever they are. But other personal property, consisting of bonds, mortgages and debts generally, has no situs independent of the domicil of the owner, and certainly can have none where the instruments, as in the present case, constituting the evidences of debt, are not separated from the possession of the owners."

This last sentence, properly construed, is not to be taken as a denial of the power of the legislature to establish an independent situs for bonds and mortgages when those properties are not in the possession of the owner, but simply that the fiction of law, so often referred to, declares their situs to be that of the domicil of the owner, a declaration which the legislature has no power to disturb when in fact they are in his possession. It was held in that case that a statute requiring the railroad company, the obligor in such bonds, to pay the state tax, and authorizing it to deduct the amount of such taxation from the interest due by the terms of the bond, was as to non-residents a law impairing the obligation of contracts. The same proposition was affirmed in *Murray* v. *Charleston*, 96 U. S. 432, where the city of Charleston attempted to tax its obligations held by non-residents of the State. In *Tappan* v. *Merchants' National Bank*, 19 Wall. 490, the ruling was that although shares of stock in national banks were in a cer-

tain sense intangible and incorporeal personal property, the law might separate them from the persons of their owners for purposes of taxation, and give them a situs of their own. See also *Pullman's Car Company* v. *Pennsylvania*, 141 U. S. 18, 22, where the question of the separation of personal property from the person of the owner for purposes of taxation was discussed at length. As also the case of *Savings Society* v. *Multnomah County*, 169 U. S. 421, 427, in which a statute of Oregon taxing the interest of a mortgagee in real estate was adjudged valid, although the owner of the mortgage was a non-resident. Nor is there anything in the case of *Kirtland* v. *Hotchkiss*, 100 U. S. 491, conflicting with these decisions. It was there held that a State might tax one of its citizens on bonds belonging to him, although such bonds were secured by mortgage on real estate situated in another State. It was assumed that the situs of such intangible property as a debt evidenced by bond was at the domicil of the owner. There was no legislation attempting to set aside that ordinary rule in respect to the matter of situs. On the contrary, the legislature of the State of Connecticut, from which the case came, plainly reaffirmed the rule, and the court in its opinion summed up the case in these words (p. 499): "Whether the State of Connecticut shall measure the contribution which persons resident within its jurisdiction shall make by way of taxes, in return for the protection it affords them, by the value of the credits, choses in action, bonds or stocks which they may own (other than such as are exempted or protected from taxation under the Constitution and laws of the United States) is a matter which concerns only the people of that State, with which the Federal Government cannot rightfully interfere."

This matter of situs may be regarded in another aspect. In the absence of statute, bills and notes are treated as choses in action and are not subject to levy and sale on execution, but by the statutes of many States they are made so subject to seizure and sale, as any tangible personal property. 1 Freeman on Executions, sec. 112; 4 Am. & Eng. E. of L. 2d ed. 282; 11 Am. & Eng. E. of L. 2d ed. 623. Among the States referred to in these authorities as having statutes warranting

such levy and sale are California, Indiana, Kentucky, New York, Tennessee, Iowa and Louisiana. *Brown* v. *Anderson*, 4 Martin, [N. S.] 416, affirmed the rightfulness of such a levy and sale. In *Fluker* v. *Bullard*, 2 La. Ann. 338, it was held that if a note was not taken into the actual possession of the sheriff a sale by him on an execution conveyed no title on the purchaser, the court saying: "In the case of *Simpson* v. *Allain* it was held that, in order to make a valid seizure of tangible property, it is necessary that the sheriff should take the property levied upon into actual possession. 7 Rob. 504. In the case of *Gobeau* v. *The New Orleans & Nashville Railroad Company*, the same doctrine is still more distinctly announced. The court there says: 'From all the different provisions of our laws above referred to, can it be controverted that, in order to have them carried into effect, the sheriff must necessarily take the property seized into his possession? This is the essence of the seizure. It cannot exist without such possession.' 6 Rob. 348. It is clear, under these authorities, that the sheriff effected no seizure of the note in controversy, and consequently his subsequent adjudication of it conferred no title on Bailey."

The same doctrine was reaffirmed in *Stockton* v. *Stanbrough*, 3 La. Ann. 390. Now if property can have such a situs within the State as to be subject to seizure and sale on execution, it would seem to follow that the State has power to establish a like situs within the State for purposes of taxation.

It has also been held that a note may be made the subject of seizure and delivery in a replevin suit. *Graff* v. *Shannon*, 7 Iowa, 508; *Smith* v. *Eals*, 81 Iowa, 235; *Pritchard* v. *Norwood*, 155 Mass. 539.

It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicil of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin; and yet they are but promises to pay — evidences of existing indebtedness. Notes and morgtages are of the same nature; and while they may not have become so generally recognized as tangible personal property, yet they

have such a concrete form that we see no reason why a State may not declare that if found within its limits they shall be subject to taxation.

It follows from these considerations that

The decree of the Circuit Court must be reversed and the case remanded for further proceedings.

MR. JUSTICE HARLAN and MR. JUSTICE WHITE dissented.